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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 193.

THE CITY OF ST. LOUIS, APPELLANT,

vs.

THE UNITED RAILWAYS COMPANY AND THE ST. LOUIS TRANSIT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 10, 1907.

(20,519.)

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1 The United States of America to The United Railways Company and The St. Louis Transit Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein The City of St. Louis is appellant and you are appellee-, to show cause, if any there be, why the judgment rendered against the said appellant, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable G. A. Finkelnburg Judge of the Circuit Court of the United States for the Eastern District of Missouri, this 11″ day of December in the year of our Lord one thousand nine hundred and six.

G. A. FINKELNBURG,
United States District Judge for the Eastern District of Missouri.

1½ [Endorsed:] In Equity No. 4985 United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. United Railways Company and St. Louis Transit Company *vs.* The City of St. Louis. Citation. Filed Dec. 11 1906. James R. Gray, Clerk.

Service of the within citation acknowledged this 11th day of Dec. 1906.

BOYLE & PRIEST,
Att'ys for Appellees.

2 In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

Be it remembered, that heretofore, to-wit: on the 12th day of April, A. D. 1904, there was filed in the office of the Clerk of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, a certain Bill of Complaint, wherein United Railways Company of St. Louis, and St. Louis Transit Company, are Complainants, and City of St. Louis, Defendant, which said Bill of Complaint is in words and figures as follows, to-wit:

(*Bill of Complaint.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

Bill in Equity.

To the Honorable the United States Circuit Court in and for the Eastern Division of the Eastern District of Missouri:

The complainants, United Railways Company of St. Louis and St. Louis Transit Company, complain of the above named defendant, the City of St. Louis, and show unto your Honorable Court:

(1) That the United Railways Company is a corporation created by and existing under the laws of the State of Missouri, having its principal office and place of business in the City of St.
3 Louis, in the State of Missouri, in the Eastern Division of the Eastern District of said State. That said company was incorporated March 11th, 1898, under the name of the Central Traction Company, and that on July 8th, 1899, its name was changed to United Railways Company of St. Louis.

(2) That the St. Louis Transit Company is a corporation created by and existing under the laws of the State of Missouri, and having its principal office and place of business in the City of St. Louis, in the State of Missouri, in the Eastern Division of the Eastern District of said State.

(3) That the City of St. Louis is a municipal corporation of the said State of Missouri, in the Eastern Division of the Eastern District of said State.

(4) That the City of St. Louis is authorized by its charter, through its Municipal Assembly acting by ordinance, to determine all questions arising with reference to street railroads in the corporate limits of the city, which may involve the construction of such street railroads, granting the right of way, or regulating or controlling them after their completion; and it has power also in like manner to sell the franchise or right of way for such street railroads to the highest bidder, or, as a consideration therefor, to impose a *per capita* tax on the passengers transported, or an annual tax on the gross receipts of such railroad on each car; and no street railway may be incorporated or built in the City of St. Louis except according to the above stated conditions of the charter, and in such manner and to such extent as may be provided by ordinance.

4 (5) That the said United Railways Company was incorporated, and is empowered by its Articles of Incorporation, to construct, maintain and operate street railways in the said City of St. Louis, and that it was authorized by ordinance of the City of St.

Louis, numbered 19,352, passed April 12th, 1898, and by other ordinances of said city hereinafter mentioned, to construct, maintain and operate street railways on Twelfth street and other streets in said city in said ordinance described, and to acquire by lease or purchase the property, franchises and privileges of other street railway companies in the City of St. Louis, and to operate the same; and, pursuant to such authority, it has, by construction and purchase, acquired a large system of street railways in the said City of St. Louis, aggregating three hundred and sixteen (316) miles.

(6) That the St. Louis Transit Company was incorporated for the purpose of acquiring, and is authorized by its Articles of Incorporation to acquire by lease or otherwise, lines of street railway in the City of St. Louis, and to maintain and operate the same, and that, pursuant to such purposes and authority, and in virtue of an ordinance of the said City of St. Louis, numbered 19,738, and approved March 20th, 1899, and of the other odinances of the said City hereinbefore and hereinafter mentioned, it has leased the lines of street railway in the City of St. Louis belonging to the said United Railways Company, and is now engaged in operating the same.

(7) That among the lines of street railway in said city, owned by said United Railways Company and operated by the St. Louis Transit Company are lines formerly known as the Citizens' 5 Railway, originally constructed in the year 1859, and extended from time to time on Broadway and other streets in said City of St. Louis under ordinances of said city authorizing such construction and extension by the Citizens' Railway Company, a corporation created by and existing under the laws of the State of Missouri. And by ordinance of said city, numbered 11,528, approved December 27th, 1880, said Citizens' Railway Company was authorized to extend its lines and to maintain and operate the same over streets of the City of St. Louis therein mentioned, for the period of thirty years from the date of said ordinance, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition (and for the consideration that it should not charge for transportation of passengers in excess of the rates of fare in said ordinance prescribed, to-wit, seven cents in cash, or five cents when tickets were purchased), and upon the further condition, and as a consideration for the grant of its rights and franchises, that it, the said company, its successors and assigns, should, for the rights and franchises received, pay to the said city, on the first day of July and the first day of January of each year, until and including January 1st, 1884, the sum of twenty-five hundred dollars, and on the first day of July and the first day of January of each year, until the expiration of said ordinance, the sum of five thousand dollars, which sum it is provided in said ordinance "shall be in addition to all taxes as now or hereafter prescribed by law." And it was further provided that failure to pay said sums, or any of them, within thirty days after they become due, should render the ordinance void and cause the rights and franchises thereby granted to revert to the said city. And thereafter, by ordinance of 6 said city numbered 17,183, approved April 1st, 1893, the rights and franchises granted by said ordinance 11,528 were

extended for a period of twenty-five years from and after the 27th day of December, 1910, upon the same conditions and considerations of payment for the said period of extension as are contained in the said ordinance numbered 11,528. And the said two last mentioned ordinaces were accepted by the Citizens' Railway Company for itself, its successors and assigns, and constitute a contract between the said city and the said company, its successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And on the 30th day of September, 1899, the United Railways Company purchased, and by proper deed of conveyance acquired, all the rights, property and franchises of the said Citizens' Railway Company, including the right to maintain and operate its lines of railway in the said City of St. Louis, and on the same day leased the same to the St. Louis Transit Company for a term ending April 1st, A. D. 1939. And the said lines of street railway have been maintained and operated continuously since the same were constructed by the Citizens' Railway Company, and by its successors, the Uinted Railways Company and the St. Louis Transit Company, and all the conditions of the aforementioned ordinances have been kept by the said companies, and all the payments required by the said ordinances to be made by them have been made as the same became due respectively.

(8) And among the lines of street railway owned by the said United Railways Company, and operated by the St. Louis Transit Company, are lines formerly known as the Southwestern Railway, originally constructed in the year 1893 on Chippewa street
7 and other streets in the City of St. Louis, under an ordinance of said city numbered 17,185, approved April 1st, 1893, by the Southwestern Railway Company, a corporation organized under the laws of the State of Missouri, and by said ordinance said Southwestern Railway Company was authorized to construct, maintain and operate its lines of street railway over the streets of said City in said ordinance mentioned, for the period of thirty-five years from and after the approval of said ordinance, upon certain expressed conditions as to the mode of constructing and operating the same (and upon the condition and for the consideration that fares for passengers should be at the rate of five cents for those above twelve years of age, and two and a half cents for those above five years of age and not above twelve), and upon the further condition, in consideration of the rights, privileges and franchises granted by the ordinance, that the said company its successors and assigns should pay to the city one thousand dollars per annum on the first day of July of each year, until and including the first day of July, 1905, and the sum of fifteen hundred dollars per annum on the first day of each July thereafter, until and including the year 1920, and the sum of two thousand dollars per annum on the first day of each July thereafter, until the year 1928. And by ordinance of said city numbered 19,738, approved March 20th, 1899, the said Southwestern Railway Company was authorized to extend its lines of railway, and the period of its rights, privileges and franchises was extended until March 18th, 1939, and it was authorized to sell or lease its property, rights, fran-

chises and privileges; upon condition, however, that the same
8 sums of money per annum should be paid to the city, as a consideration for the rights, privileges and franchises granted, during said extended period, by the said Southwestern Railway Company, its successors or assigns, as were to be paid during the last named period under said ordinance numbered 17,185. And it was provided by said ordinances that failure to pay said sums, or any of them, within sixty days after the same became due, should cause a forfeiture of all the rights, privileges and franchises conferred thereby. And the said ordinances were accepted by the said Southwestern Railway Company for itself, its successors and assigns, and constitute a contract between the said city and the said company, its successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And on the 1st day of April, 1901, the United Railways Company, by proper deed of conveyance, acquired all the property, rights, franchises and privileges of the said Southwestern Railway Company, including the right to maintain and operate its lines of street railway in said city, and has leased the same to the St. Louis Transit Company for a term ending April 1st, 1939. And the said lines of street railway have been maintained and operated continuously since they were constructed by the said Southwestern Railway Company, and by its successors, the United Railways Company and the St. Louis Transit Company, and all the conditions of the aforementioned ordinances have been kept by the said companies, and all the payments required by the said ordinances to be made by them have been made as the same became due respectively.

(9) That among the lines of street railway owned by the United Railways Company, and operated by the St. Louis Transit
9 Company, are the lines in said city known as the Cass Avenue and Fair Grounds Railway. That the said Cass Avenue and Fair Grounds Railway was constructed under ordinance of the City of St. Louis numbered 8,701, enacted January 19th, 1874, granting to the Cass Avenue and Fair Grounds Railway Company, the right to construct a street railway along Walnut, Seventh, Eighth, Cass avenue, West Twentieth, Warren, Jefferson avenue, St. Louis avenue, Prairie avenue, and other streets, in the City of St. Louis; and, by ordinance numbered 9,139 of said city, approved July 10th, 1874, said Cass Avenue and Fair Grounds Railway Company was authorized to construct a railway along Jefferson avenue and Glasgow avenue, in the said City of St. Louis, and to maintain and operate the same; and, by ordinance numbered 13,872, approved February 8th, 1887, the said company was authorized to operate its said lines of railway by electric power; and, by ordinance of said city numbered 16,639, approved April 11th, 1892, said Railway Company was authorized to extend its said lines of railway over other streets and avenues in said city, in the said ordinances named; and, as a consideration for the rights, franchises and privileges granted by said ordinance No. 16,639, it was stipulated and agreed between the said City of St. Louis and the said Cass Avenue and Fair Grounds Railway Company that the said Cass Avenue Railway Company should

pay to the city of St. Louis one and one-half per cent. on the amount of its gross earnings for each six months down to and including the six months terminating January 1st, 1895; the sum of two per cent. on the amount of its gross earnings for each six months from January 1st, 1895, to January 1st, 1900; the sum of two and one-half per cent. on the amount of its gross earnings for each six months
10 from January 1st, 1900, to January 1st, 1910; the sum of three per cent. on the amount of its gross earnings for each six months from January 1st, 1910, to January 1st, 1920, and the sum of three and one-half per cent. on the amount of its gross earnings for each six months from Janaary 1st, 1920, to January 1st, 1925; and failure on the part of the company, its successors and assigns, to pay the said tax on its gross receipts, within thirty days after the same became due and payable, it was provided in said ordinance should work a forfeiture of the franchises granted by the said ordinance; and, by an ordinance of the said City of St. Louis, approved March 20th, 1899, and numbered 19,738, the said company was further authorized to extend its tracks over streets of the said City of St. Louis, and it was provided by said ordinance that the sums required by previous ordinances to be paid should continue to be paid, and that the said company, during the period beginning January 1st, 1925, and ending January 1st, 1931, should continue the payment of three and one-half per centum on its gross earnings from passenger receipts, and from January 1st, 1931, until the termination of the ordinance, to-wit, the first day of January, 1949, the sum of four per cent. of its gross earnings from passenger receipts; and failure to pay such sums, it was provided by said ordinance, should cause a forfeiture of the franchises of the said company. And the complainants show that the said ordinances hereinbefore referred to constitute a contract betwe-n the city of St. Louis and the said Cass Avenue and Fair Grounds Railway Company, its successors and assigns, authorizing and empowering the said Railway Company, its successors and assigns, to construct, maintain and operate lines of street railway, as in said ordinances provided, upon condition
11 of paying the said percentage of gross receipts of the said company by said ordinance provided to be paid, and that the said City of St. Louis has no right, authority or power to alter, impair or abrogate the same. And complainants show that the said United Railways Company, on September 19th, 1899, purchased all the lines of railway of the said Cass Avenue and Fair Grounds Railway Company, and all its rights, franchises and privileges, and is the owner of the same, and holds the title thereto by proper conveyance; and that the said St. Louis Transit Company is the lessee of the said lines of railway, and holds the same as such lessee by lease duly executed on September 30th, 1899, and is now engaged in maintaining and operating the same; and that the conditions of the several above mentioned ordinances, concerning the maintenance and operation of said Cass Avenue and Fair Grounds lines of railway, have all been kept by the said Cass Avenue and Fair Grounds Railway Company and its successors and assigns, the United Railways Company and the St. Louis Transit Company, and all the payments provided for in said

ordinances, in consideration of the rights, privileges and franchises granted by them, have been made by the said companies as the same severally became due.

(10.) And among the lines of street railway in said city owned by said United Railways Company, and operated by the St. Louis Transit Company, are the lines formerly known as the Southern Railway, whose construction was begun, under an ordinance of the City of St. Louis, numbered 9,025, and approved July 2d, 1874, by the Carondelet Railway Company, upon Carondelet Road and other streets in said City of St. Louis; and thereafter the rights, franchises, privileges and property of the said Carondelet Railway Company were transferred to the South St. Louis Railway Company,
12 under authority of an ordinance of the said City of St. Louis numbered 10,105, and approved July 13th, 1876. And the said lines of railway were extended to other streets in the City of St. Louis by the said South St. Louis Railway Company, under authority of an ordinance of the said City of St. Louis numbered 10,824, and approved July 16th, 1878. And the said South St. Louis Railway Company transferred all its property, rights, privileges and franchises (including the right to construct, maintain and operate said lines of street railway) to the Southern Railway Company, about the year 1884, under authority of an ordinance of the City of St. Louis, numbered 12,973, and approved June 11th, 1884. And by ordinance numbered 14,089 of said City of St. Louis, approved July 19th, 1887, the said Southern Railway Company was authorized to extend its lines of street railway to other streets in said city, and to maintain and operate the lines as extended, and it was provided by said ordinance that, in consideration of the rights and privileges granted thereby, the said Southern Railway Company, its successors or assigns, to pay *pay* to the City of St. Louis, on the first day of January of each year, beginning with the first day of January, 1893, the sum of one thousand dollars, which should be in addition to all taxes as then or thereafter prescribed by law. And it was provided by said ordinance that a failure on the part of said Southern Railway Company, its successors or assigns, to pay any installment required by it to be paid, within sixty days after the same became due and payable, during the period for which said rights, privileges and franchises had been granted, to-wit, until July 2d, 1899, should render the said ordinance void, and cause all rights and franchises thereby granted to revert to the City of St. Louis. And by ordinance
13 of the said City of St. Louis numbered 14,837, and approved March 18th, 1889, the said Southern Railway Company was authorized to extend its lines of railway over other streets in the said City of St. Louis, and to maintain and operate said lines as extended, and the rights, privileges and franchises then possessed by the said Southern Railway Company, and those granted by said last named ordinance, were extended for a term of fifty years from and after the approval of the said ordinance. And it was provided in the said ordinance that, in consideration of the rights and privileges granted thereby, the Southern Railway Company, its successors and assigns,

should pay to the City of St. Louis on the first day of January of each year, beginning with the first day of January, A. D. 1899, to and including the year A. D. 1909, the sum of two thousand dollars; and for each and every year after the year 1909, and until the expiration of the time for which the rights and privileges granted by the ordinance were to continue, the sum of five thousand dollars on the first day of January of each of said years, which should be in addition to all taxes then or thereafter prescribed by law; and it was provided that the said ordinance should be and remain in force for a term of fifty years from and after the date of its approval, and it was provided that a failure on the part of said company, its successors or assigns, to pay any installment of money therein provided to be paid, to the City of St. Louis, should render the said ordinance null and void. And it was provided by ordinance of the City of St. Louis, numbered 17,693, and approved July 21st, 1894, that the said Southern Railway Company, its successors and assigns, might extend its lines of street railway upon other streets of the said city and operate the same as extended by electricity; and, in consideration of the rights, privileges and franchises by the said
14 ordinance granted to the Southern Railway Company, it was stipulated and agreed that the said company, its successors and assigns, should make the payments provided to be made by it in the ordinance hereinbefore mentioned, and should further pay the sum of ten thousand dollars annually to the said city on the first day of January of each year, beginning with the first day of January, 1896, and continuing thereafter down to the expiration of its franchise; and it was provided by the said ordinance that a failure on the part of said company, its successors or assigns, to pay any installment of money therein provided to be paid, into the Treasury of the City of St. Louis, within sixty days after the same became due and payable, should render the said ordinance null and void. And on the — day of ——, 1893, the said Southern Railway Company, with the consent and approval of the said City of St. Louis, transferred all its property, rights, franchises and privileges to the Southern Electric Railroad Company, a corporation of the State of Missouri, created by and existing under its laws; and the said ordinances of the City of St. Louis hereinbefore mentioned were accepted by the Southern Railroad Company, and by the Southern Electric Railway Company, its successors and assigns, and constitute a contract between the said city and the said companies, their successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And by deed of date September 19th, 1899, the United Railways Company of St. Louis acquired all the property, rights, privileges and franchises of the said Southern Electric Railroad Company, and, on the 30th day of September, 1899, leased the same to the St. Louis Transit Company for a period to terminate on the first day of April, 1939. And the said lines
15 of street railway have been maintained and operated continuously since the same were constructed by the several street railroad companies hereinbefore named, and all the conditions of the aforementioned ordinances have been kept by the said com-

panies, and all the payments required by the said ordinances to be made have been made as the same became due respectively.

(11) And among the lines of street railway owned by the said United Railways Company, and operated by the St. Louis Transit Company, are the lines formerly known as the Lindell Railway, including lines constructed by the Compton Heights, Union Depot and Merchants' Terminal Railway Company, the Taylor Avenue Railway Company, the Vandeventer Avenue Railroad Company, the Missouri Railroad Company, the Forest Park, Laclede and Fourth Street Railway Company, and the Delmar Avenue and Clayton Railway Company; all of which lines were constructed under authority of ordinances duly enacted by the said City of St. Louis. And by ordinance of the said City of St. Louis numbered 19,429, and approved October 28th, 1898, the Lindell Railway Company, its lessees, successors and assigns, were authorized to extend its lines of railway over other streets in the said City of St. Louis, and to maintain and operate the same as extended, and to acquire the properties, rights, privileges and franchises of the other railway companies hereinbefore mentioned, and to maintain and operate their lines of street railway; and it was stipulated and provided, among other things, in the said ordinance, that, in consideration of the rights, privileges and franchises thereby granted, the said Lindell Railway Company, its successors and assigns, should pay, in the years 1899 and 1900, to the City of St. Louis, the sum of seven thousand dollars, and thereafter the said Lindell Railway Company should, on the first day of January, in the year 1901, and on the first
16 day of July of said year, and on the first days of January and July of each year thereafter, until the first day of January, in the year 1906, pay into the Treasury of the City of St. Louis the sum of fourteen thousand dollars; and on the first days of January and July in the year 1906, and on the same days of each year thereafter, until and including the first day of January, in the year 1914, the sum of sixteen thousand dollars; and on the first day of January in the year 1915, and on the same day of each year thereafter, until and including the first day of January, in the year 1924, a sum equal to three per cent. of the gross earnings of said company during the preceding year; and on the first day of January, in the year 1925, and on the same day of each year thereafter, until and including the first day of January, 1933, a sum equal to three and one-half per cent. of the gross earnings of said company during the preceding year; and on the first day of January, in the year 1934, and on the same day of each year thereafter, until and including the first day of January, 1942, the said Lindell Railway Company should pay into the Treasury of the City of St. Louis a sum equal to four per cent. of the gross earnings of said company during the preceding year; and on the 31st day of December, 1492, pay an additional sum equal to four per cent. of the gross earnings for the year 1942; which said several sums the said Lindell Railway Company, its successors and assigns were to pay in consideration of the rights and privileges granted by the said ordinances, and said company, its successors and assigns, agreed to pay to the city of St. Louis

the said sums respectively as they should become due and payable, as in said ordinance provided. And it was provided in the said ordinance that, in case of default in making any of the said payments, it should be the right of the said city of St. Louis, through
17 the action of its Mayor and Comptroller, to declare a forfeiture of all the rights, privileges and franchises therein created, and thereupon, such declaration having been made, said rights, privileges and franchises should at once cease and determine. And by the said ordinance the said rights, franchises and privileges thereby granted were to continue for a term extending to December 31st, 1942; and said last mentioned ordinance was accepted by the said Lindell Railway Company for itself, its successors and assigns, and constitutes a contract between the said city and the said company, its successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And by deed dated September 19th, 1899, and with the approval and sanction of the said City of St. Louis, the said Lindell Railway Company conveyed all its property, rights, privileges and franchises to the said United Railways Company; and on the 30th day of September, 1899, the said United Railways Company leased said property, rights, privileges and franchises to the St. Louis Transit Company, for a term ending on the first day of April, 1939; and the said lines of street railway have been maintained and operated continuously since the same were constructed by the companies at the time owning and operating the same, and have been operated continuously since the date of said last mentioned ordinance by the Lindell Railway Company, and by its successors, the United Railways Company and the St. Louis Transit Company, and all the conditions of the said ordinance have been kept by the said companies, and all the payments required by the said ordinance to be made by them have been made as the same became due respectively.

(12) And among the lines of street railway in the said city owned by the said United Railways Company, and operated
18 by the St. Louis Transit Company, are the lines formerly known as the St. Louis Railroad, the construction of which was begun under an ordinance of said City of St. Louis numbered 4,371, and approved March 10th, 1859, and extended from time to time under authority of the ordinances of the said city. And by ordinance of the city of St. Louis numbered 12,477, and approved March 27th, 1883, the said St. Louis Railroad Company was authorized to extend its lines of railway over other streets in said city, and to maintain and operate the same as extended, and its rights, privileges and franchises to construct, maintain and operate a street railway, as in said ordinance provided, were extended thirty years from the date of the approval of said ordinance, to-wit, March 27th, 1883. And by amendment of said last named ordinance, made by ordinance numbered 14,182, and approved August 2d, 1887, it was provided that, in consideration of the rights and privileges granted to the said St. Louis Railroad Company, its successors and assigns, said company, its successors and assigns, should pay into the Treasury of the City of St. Louis, on the first days of July and January

of each year, beginning with the first day of July, A. D. 1887, to and including the year A. D. 1903, the sum of two thousand, five hundred dollars, and for each and every year after the year A. D. 1903, on the first days of July and January of each year, until the expiration of the term of its rights and privileges as granted by the said ordinance, the sum of five thousand dollars, which amounts of money should be in addition to all taxes then or thereafter prescribed by law; and by said amendment, the term of the rights, franchises and privileges of the said St. Louis Railroad Company was extended for a period of fifty years from the date of the approval of
19 said ordinance. And it was provided by the said ordinance that a failure on the part of the said company, its successors or assigns, to pay any installment of money, therein provided to be paid, into the Treasury of the City of St. Louis, within sixty days after the same became due and payable, should render the ordinance null and void. And the said ordinance and the amendment thereto were accepted by the said St. Louis Railroad Company for itself, its successors and assigns, and the same constitute a contract between the said city and the said company, its successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And by deed dated April 1st, 1901, the said United Railways Company acquired all the property, rights and franchises of the said St. Louis Railroad Company, including its lines of street railway and the rights, privileges and franchises to operate the same in the said City of St. Louis, and has leased the same to the St. Louis Transit Company for a period ending on the first day of April, A. D. 1939. And the said lines of street railway have been maintained and operated continuously since the same were constructed by the said St. Louis Railroad Company, and by its successors, the United Railways Company and the St. Louis Transit Company, and all the conditions of the ordinances with relation to said street railway have been kept by the said companies, and all the payments required by the said ordinances to be made by them have been made as the same became due respectively.

(13) And among the lines of street railway owned by the said United Railways Company, and operated by the St. Louis Transit Company, are the lines formerly known as the People's Railway, originally constructed in said City of St. Louis by the Peo-
20 ple's Railway Company, a corporation of the State of Missouri, under authority of ordinances of the said City of St. Louis duly enacted in that behalf. And by ordinances of the City of St. Louis numbered 17,196, and approved April 8th, 1893, the said People's Railway Company was authorized to extend its lines of street railway in said city, and to maintain and operate the same as extended, and the term of its rights, privileges and franchises was extended for a period of fifty years from and after the date of the approval of said ordinance. And it was provided, among other things, in said ordinance, that, in consideration of the rights and privileges granted thereby to the People's Railway Company, the said Railway Company should and would pay to the City of St. Louis, on the first days of January and July of each year, from and

after the first day of January, A. D. 1883, to and including the first day of January, A. D. 1889, the sum of one thousand, five hundred dollars, and for the years 1890 to 1895, both inclusive, the sum of two thousand dollars, and on the first days of January and July of each of said years, and for each and every year after the year 1895, and until the expiration of the time for which its rights were granted, the sum of two thousand, five hundred dollars on the first days of January and July of each of said years, which should be in addition to all taxes as then or thereafter prescribed by law. And it was provided by said ordinance that a failure on the part of said company, its successors or assigns, to pay any of the installments aforesaid within sixty days after the same became due and payable should render the ordinance void, and all the rights and franchises thereby granted were to revert to the City of St. Louis. And the said People's Railway Company accepted the said ordinance for itself, its successors and assigns, and the same constitutes a contract between the said city and the said Railway Company, its suc-
21 cessors and assigns, which the said city has no right or authority to alter, impair or abrogate. And on the first day of April, 1901, the said United Railways Company, by purchase and by deed of conveyance duly executed, acquired the property, rights, privileges and franchises of the said People's Railway Company, including the right to maintain and operate its said lines of street railway. And the said lines of street railway have been maintained and operated continuously since the same were constructed by the said People's Railway Company, its successors and assigns, and all the conditions of the aforementioned ordinance have been kept by the said companies and by the United Railways Company and the St. Louis Transit Company, and all the payments required by the said ordinance to be made by them have been made as the same became due respectively.

(14) And among the lines of street railway owned by the said United Railways Company, and operated by the St. Louis Transit Company, are the lines formerly known as the Union Depot Railroad, originally constructed by the Gravois Railroad Company, whose rights, under authority of the ordinances of the City of St. Louis, were acquired by the Union Depot Railroad Company, and which lines of railway were subsequently extended by the said Union Depot Railroad Company. And by ordinance of the City of St. Louis numbered 17,021, and approved January 11th, 1893, the said Union Depot Railroad Company was authorized to extend its lines of railway in said city, and to maintain and operate the same as extended, and to acquire the property, rights, privileges and franchises of the Mound City Street Railway Company and the Benton-Bellefontaine Railway Company—companies owning and operating street railways in said City of St. Louis, and to maintain and operate their
22 lines of street railway. And it was provided in said ordinance among other things that, in consideration of the rights, powers, privileges and franchises granted thereby, and which, by the terms of said ordinance, were to continue in force for a period of forty years from the date of the approval of the ordinance, the

said Union Depot Railroad Company, its successors and assigns, should pay into the Treasury of the City of St. Louis the sum of one thousand dollars per annum, on the first day of July, 1895, and a like sum on the first day of July of each year thereafter, until and including the year 1899, and the sum of two thousand dollars per annum on the first day of July of each year thereafter, until and including the year 1904; and the sum of three thousand dollars per annum on the first day of July of each year thereafter, until and including the year 1909; and the sum of four thousand dollars per annum on the first day of July of each year thereafter, until and including the year 1914; and the sum of five thousand dollars per annum on the first day of July of each year thereafter, until and including the year 1926. And the said Union Depot Railroad Company accepted the said ordinance for itself, its successors and assigns, and the same constitutes a contract between the said city and the said company, its successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And by ordinance of said city numbered 18,049, and approved April 8th, 1895, the said Union Depot Railroad Company was authorized to extend its lines of street railway to other streets of said city, and to maintain and operate its lines so extended. And in consideration of the rights and franchises granted by the said ordinance, the said
23 company was required to pay into the Treasury of the City of St. Louis, on the first day of January, 1900, the sum of one thousand dollars, and a like sum on the first day of January of each year thereafter, until and including the year 1910; and the sum of two thousand dollars on the first day of January, 1911, and a like sum on the first day of January of each year thereafter, until and including the year 1920; and the sum of three thousand dollars on the first day of January, 1921, and a like sum on the first day of January of each year thereafter, until the expiration of the franchise; such payments to be in addition to all other taxes, assessments or sums that the said company was then, or might thereafter be, liable for to the said City of St. Louis; and a failure to pay said sums, or any of them, it was provided by said ordinance should work a forfeiture of all the rights granted thereby. And the said Union Depot Railroad Company accepted the said ordinance for itself, its successors and assigns, and the same constitutes a contract between the said city and the said company, its successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And on the 19th day of September, 1899, the said United Railways Company, by deed duly executed, acquired all the property, rights, franchises and privileges of the said Union Depot Railroad Company, and leased the same to the St. Louis Transit Company, for a term ending on the first day of April, A. D. 1939. And the said lines of railway of said Union Depot Railroad Company have been by the said company, and by its successors and assigns, the United Railways Company and the St. Louis Transit Company, maintained and operated in conformity to the provisions of the ordinances hereinbefore mentioned, and all the payments in said ordinances pro-

vided to be made have been made by the said United Depot
24 Railroad Company and the United Railways Company and the St. Louis Transit Company as the same became due.

(15) And among the lines of street railway in said city owned by said United Railways Company, and operated by the St. Louis Transit Company are the lines formerly known as the Grand Avenue Railway, which were constructed by the Grand Avenue Railway Company, a corporation of the State of Missouri, under authority of an ordinance of the City of St. Louis numbered 17,047, and approved February 17th, 1893, by the terms of which ordinance said Grand Avenue Railway Company was authorized to construct, maintain and operate, for a term of forty years from the date of the approval of the ordinance, a street railway in the city of St. Louis, upon the streets of said city designated in the said ordinance. And it was provided by the said ordinance that, in consideration of the rights and privileges granted thereby, the said Grand Avenue Railway Company, its successors and assigns, should pay into the Treasury of the City of St. Louis, annually, beginning in the year 1895, the sum of one thousand dollars per annum for the first five years; the sum of two thousand dollars per annum for the second period of five years, and the sum of four thousand dollars per annum for the next succeeding ten years, and the sum of five thousand dollars per annum for the next succeeding ten years, and the sum of six thousand dollars per annum for the remainder of the life of the franchise. And the said Grand Avenue Railway Company accepted the provisions of the said ordinance, and constructed its said railway as therein prescribed, and maintained and operated the same according to the provisions of the said ordinance; and the said ordinance constitutes a contract between said Grand Avenue Railway Company and
25 said City of St. Louis, which the said city has no right or authority to alter, impair or abrogate. And on the 19th day of September, 1899, by deed duly executed, the United Railways Company acquired all the property, rights, franchises and privileges of the said Grand Avenue Railway Company, including the right to maintain and operate its lines of street railway, and on the 30th day of September, 1899, leased the same to the St. Louis Transit Company for a term ending on the first day of April, A. D. 1939. And the said Grand Avenue Railway Company, and its successors and assigns, the United Railways Company and the St. Louis Transit Company, have maintained and operated the said lines of railway in accordance with the provisions of the above mentioned ordinance, and have made all the payments by the said ordinance required, as the same became due.

(16) And among the lines of street railway in said city owned by the said United Railways Company and operated by the St. Louis Transit Company are the lines formerly known as the Jefferson Avenue Railroad, which were constructed in the said city over certain streets thereof, under authority of ordinances duly enacted in that behalf, by the Jefferson Avenue Railroad Company, with authority to maintain and operate the same for a period of thirty years from and after February 6th, 1882. And by authority of ordinance

numbered 18,047, and approved April 4th, 1895, the said Jefferson Avenue Railroad Company was authorized to operate its lines of street railway by electric power. And it was stipulated and provided in said ordinance that, in consideration of the rights and franchises then and theretofore granted to the Jefferson Avenue Railroad Company, its successors and assigns, the said Railroad Company should pay into the Treasury of the City of St. Louis, in January of
26 each year, on and after January 1st, 1897, two per cent. of the gross amount of the earnings of the said company for the preceding year, if they exceeded seventy-five thousand dollars and did not exceed one hundred and twenty-five thousand dollars; and two and one-half per cent. if they exceeded one hundred and twenty-five thousand dollars and did not exceed one hundred and fifty thousand dollars; and three per cent. if they exceeded one hundred and fifty thousand dollars; which payments should be made in addition to all other taxes as then or thereafter prescribed by law; and a failure on the part of said company, its successors or assigns, to pay the aforesaid tax on its gross receipts, within thirty days after the same became due and payable, should work a forfeiture of the franchises granted by the said ordinance. And the said Jefferson Avenue Railroad Company accepted the provisions of said ordinance, and constructed and has maintained and operated its lines of street railway in accordance with the provisions thereof, and has made all payments by the said ordinance required to be made; and the said ordinance constitutes a contract between the Jefferson Avenue Railroad Company and the said City of St. Louis, which the said city has no right or authority to alter, impair or abrogate. And on the 19th day of September, 1899, by deed duly executed, the United Railways Company acquired all the property, rights, privileges and franchises from said Jefferson Avenue Railroad Company, including the right to maintain and operate its lines of street railway; and on the 30th day of September, 1899, leased the same to the St. Louis Transit Company, for a period ending on the first day of April, A. D. 1939; and the said Jefferson Avenue Railroad Company and the said United Railways Company and St. Louis Transit Company have maintained and operated said lines of street railway in accordance
27 with the provisions of the above mentioned ordinance prescribed in that behalf, and have made all payments thereby required, as the same became due.

(17) And by ordinance numbered 19,352, enacted April 13th, 1898, the said United Railways Company, its successors or assigns, was authorized and empowered to construct, maintain and operate lines of street railway upon and over certain streets of the City of St. Louis in said ordinance designated, and to acquire by purchase, lease or otherwise the property, rights, privileges and franchises of other street railway companies in the City of St. Louis, and to operate the same, or to lease the same for operation to other street railway companies; and the rights, franchises and privileges granted by the said ordinance were to continue in force for a period of fifty years from the date of its passage. And in consideration of the rights and franchises granted by the said ordinance to the said

United Railways Company of St. Louis, it was stipulated and agreed that the said United Railways Company should pay to the City of St. Louis, semi-annually, on the first of January and July of each year, for the first ten years after the completion of the lines of railway authorized to be constructed by the said ordinance, ten thousand dollars per annum; for the second ten years, fifteen thousand dollars per annum; for the third ten years, twenty thousand dollars; for the fourth ten years, twenty-five thousand dollars, and, for the remainder of the term of the franchise, thirty thousand dollars, per annum. And the said United Railways Company accepted the provisions of the said ordinance, and has complied therewith, and the same constitutes a contract between the said United Railways Company and the said City of St. Louis, which the said city has no right or authority to alter, impair or abrogate. And the said
28 United Railways Company has made all the payments required by the said ordinance to be made, as the same became due respectively.

(18) And these complainants show that by the provisions of said ordinance numbered 19,352, and by the provisions of the other ordinances hereinbefore set forth, they are required to keep the streets between the rails of their tracks, and the space between their tracks where there are two tracks or more in a street and a space of twelve inches on the outside of each rail, improved and in good repair, at their cost, with a material similar to or better than that used in the streets in which such tracks are laid, and the spaces aforesaid must be reconstructed and repaired by complainants as often and whenever the city may by ordinance direct the construction, repair or reconstruction of said streets. And these complainants and their predecessors in right and title have at all times complied with said provisions of said ordinances.

(19) These complainants show that by the provisions of the several ordinances in this bill of complaint hereinbefore mentioned and set forth, and by amendments thereto, the said United Railways Company and the said St. Louis Transit Company are restricted in their charges for transporting passengers over their lines of railway to five cents for each passenger above the age of twelve years, and to two and one-half cents for passengers between the ages of three and thirteen years.

(20) And these complainants show that by the provisions of said ordinance numbered 19,352 they are required to operate the street railways in the city of St. Louis, owned and operated by them, substantially as one system, and it is provided in and by said ordinance that transfers shall be given so as to transport passengers by
29 a continuous trip from any point on the system to any other point on the system. And such transfers are so given by complainants free of any charge additional to the fare of five cents or of two and one-half cents originally paid by the passenger.

(21) And these complainants show to the court that the several sums required by them to be paid under the provisions of the various ordinances hereinbefore set forth, the construction, reconstruction, paving, repaving, repairing and maintaining the spaces

in the streets used by them, required by them to be done as hereinbefore set forth by the several ordinances aforesaid, the limitations imposed by said ordinances upon the rate of fare which may be charged by complainants for travel and transportation over their said lines of street railway, and the requirement for the giving of transfers to passengers as set out above, were and are the considerations exacted, demanded and stipulated for by the said City of St. Louis from these complainants and their predecessors in right and title for the rights granted by the said city to construct, maintain and operate the said lines of street railway, and no other right or privilege of any kind, and no other thing of value of any kind whatsoever, was given or granted to the complainants or to their predecessors in right and title by the said city, in consideration of the aforesaid requirements made of them. And the said ordinances constitute contracts and agreements between the said complainants and the said City of St. Louis, giving right, license and authority to the said companies to maintain the said lines of street railway and operate cars over the same for the transportation of passengers, which said contracts are irrevocable, except by the agreement of the parties thereto, for the terms thereof.

30 (22) And the complainants show that the city of St. Louis had authority, under its charter and laws and the Constitution of the State, to provide by contract through the form of ordinances enacted in that behalf, for the construction, maintenance and operation of street railways over the streets of the said city, and to prescribe the conditions thereof and the considerations therefor; and that, by the the ordinances hereinbefore mentioned, the said city of St. Louis did contract with the several companies hereinbefore named, and their successors and assigns, the United Railways Company and the St. Louis Transit Company, for the construction, maintenance and operation of the said several lines of railway, and did, by said ordinances, prescribe the consideration to be paid therefor, which consideration has in all cases been paid.

(23) And these complainants show that it is provided by the Constitution of the State of Missouri, which was adopted in the year A. D. 1875, in Article X thereof, among other things, as follows, viz:

"SECTION 1. *Taxing Power, How Exercised.*—The taxing power may be exercised by the General Assemby for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

"SEC. 3. *Taxes for Public Purposes Must Be Uniform.*—Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

"SEC. 4. *Taxes in Proportion to Value.*—All property subject to taxation shall be taxed in proportion to its value.

"SEC. 5. *Railway Corporations, Taxed for What Purposes.*—All

railroad corporations in this State, or doing business therein,
31 shall be subject to taxation for State, county, school, municipal and other purposes, on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock.

"SEC. 10. *General Assembly Shall Not Tax Municipalities, When.*—The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

"SEC. 11. *Rates for Local Purposes—Limits—How Increased for Schools and Erecting Public Buildings.*—Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars' valuation; in counties having six million dollars and under ten million dollars said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For city and town purposes the annual rate on property in cities and towns having thirty thousand inhabitants or more shall not, in the aggregate, exceed one hundred cents on the hundred dollars' valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars' valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars' valuation; and in towns having one thousand inhabitants or
32 less, said rate shall not exceed twenty-five cents on the hundred dollars' valuation. For school purposes in districts the annual rate on property shall not exceed forty cents on the hundred dollars' valuation: *Provided*, The aforesaid annual rates for school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars' valuation, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars' valuation, on the condition that a majority of the voters who are tax-payers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings, in counties, cities or school districts, the rates of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city, or school district, voting at such election, shall vote therefor. The rate herein allowed to each county

shall be ascertained by the amount of taxable property therein, according to the last assessment for state and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census taken under the authority of the state, or of the United States; said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

And it was provided by general law of the State of Missouri, in pursuance of the constitutional provisions hereinbefore set forth, as shown in Article VIII, of Chapter 149, of the Revised Statutes of Missouri for the year 1899, that railroad companies were to be assessed by the State Board of Equalization of the State of Missouri for all purposes of taxation, state, county and other municipal or local purposes, and that the taxes levied thereon should be levied in the manner by said law provided, to-wit, upon the cash value
33 of all the property owned by such railroad company, return whereof was to be made to said Board of Equalization. And it was provided by the laws of the State of Missouri, enacted in 1897, and found in Sections 9353, 9354 and 9355 of the Revised Statutes of 1899, as follows:

"Sec. 9353. *Street Car Companies to Make Statement.*—On or before the first day of January in each year the president or other chief officer of every street railroad company in every city of this state whose line is now or shall hereafter become so far completed and in operation as to run horse cars, electric cars, cable cars, or cars propelled by any other device, for the transportation of passengers, shall furnish to the state auditor a statement, duly subscribed and sworn to by said president or other chief officer, before some officer authorized to administer oaths, setting out in detail the full length of the line, so far as completed, including branch or leased lines, the entire length in this state, the length of double or side tracks, the length of such line located upon real estate to which such company may have title as right of way, the length of such line located upon the public streets or thoroughfares of any city, together with all cars, motors, grip cars, live-stock, electric trolley wires, cables, cable conduits, power-houses, stables and all other property, real, personal or mixed, owned, used or leased on the first day of June, which may be used in or incident to the operation of such street railroad, the length of such line in each county, municipal township and city through or in which it is located, and the cash value of the several items embraced in the statement.

"Sec. 9354. *Taxes to be Levied.*—The said property returned to the state auditor, as by Section 9353 required, shall be subject to taxation for state, county, municipal and other purposes to the same extent as the real and personal property of private persons, and the same shall be assessed, apportioned, certified and the taxes thereon levied and collected at the time and in the manner which is
34 now or may hereafter be provided by law for the assessment and taxation of other railroad property.

"Sec. 9355. *Purpose of Certain Sections.*—It being the purposes

of the two preceding sections to make the property of street railroads in cities assessable and taxable in the same manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property, all acts and parts of acts inconsistent or in conflict therewith are hereby repealed."

And it was provided by the laws of the State of Missouri, approved March, 1901, as follows:

"SECTION 1. The franchise (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and of all other similar corporations owning, operating and managing public utilities, and of all quasi-public corporations possessing special and peculiar privileges, and authorized by law to perform any public service (except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchises the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation.

"SEC. 2. The state board of equalization in cases of railroads, street railroads, bridges, telegraph, telephone companies and all other corporations whose property the state board of equalization is now or may hereafter be required to assess, and the county assessor, in case of the other quasi-public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporation, tangible and intangible, in this state, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessor's books, under the head of 'all other property.'"

And it is provided by the laws of the State of Missouri, Section 9357, Revised Statutes, A. D. 1899, that of the taxes levied upon the railroad and street railroad properties of the state and collected therefrom, each county, municipal township, city or incorporated town of the state shall receive its due share of the taxes levied and collected for municipal purposes, to-wit: the taxes levied for municipal purposes upon the portion of the property located within the municipality, with the due proportion of franchise value added; and the City of St. Louis had no right or authority to levy any taxes, public charges or burdens upon the property or business of these complainants, other than as provided by the general laws of the State of Missouri hereinbefore referred to, and the said city had no right to levy upon or to demand or collect from these complainants any portion of their gross receipts, or to impose any *per capita* charge on the passengers transported by complainants, except as the same was done by the ordinances and contracts granting the rights to the complainants, or to their predecessors in right and title,

to use the streets of the said city of St. Louis for street railroad purposes, and as a consideration for the grant of such rights.

(24) And complainants show that the said city of St. Louis, the premises notwithstanding, by ordinance numbered 21,087, and approved March 25th, 1903, assumed to enact and provide that all persons, co-partnerships, associations and companies engaged in the business of transporting passengers from one point to another

36 within the said city of St. Louis, for hire, on street railways, should pay the License Collector of the said City of St. Louis an alleged license for each and every car used by them in transporting passengers, which so-called license was to be payable on the 16th day of April, July, October and January of each year for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December; the amount of such alleged license on each such car to be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding three months ending as aforesaid. And the said so-called license, so assumed to be authorized and imposed by the said ordinance numbered 21,087, imposes a charge upon the gross receipts from the carriage of passengers exceeding two per cent. of the same. And no rights, privileges, franchises or considerations of any kind whatsoever are granted by said ordinance in consideration of the charge so assumed to be imposed, and no rights, privileges, franchises or properties of any kind whatsoever are granted by the said ordinance, or may be acquired or held under the same, other than those already possessed by the complainants under previous ordinances of and contracts with the said city. And it is provided in the said ordinance numbered 21,087 that every corporation, company or association required thereby to pay a street car license shall provide for and equip each car used in the transportation of passengers with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand, nine hundred and ninety-nine, and upon which shall be registered in continuous numerical succession the number of passengers who have paid for transportation on such car. And

37 it is further provided that each of such corporations, companies or associations shall make report of the number of passengers carried by it on each car daily, for the previous day, to the Register of the City of St. Louis, showing the number of pay or revenue passengers carried by it. And it is provided by said ordinance that every person, corporation, company or association refusing or neglecting to make the report so provided for shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five dollars, nor more than five hundred dollars. And it is provided by said ordinance that any person, company, corporation or association which it is assumed is required to pay such street car charge or license, and which shall fail or neglect to pay the same within ten days after notice from the License Collector, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than five hun-

dred dollars, and each day of such failure, neglect or refusal shall constitute a separate offense. And it is provided in said ordinance that a failure, refusal or neglect to pay such so-called license, for thirty days after the same is by the terms of said ordinance payable, shall operate as a revocation of any existing or subsequent unpaid license which such parties may have obtained to operate such street cars in said city. And it is provided in said ordinance that nothing therein contained shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance or agreement or contract, nor as replacing or affecting the same in any way, nor shall said ordinance be construed as impairing or affecting any license theretofore obtained.

38 (25) And notwithstanding the premises, the said City of St. Louis is now demanding, under pretense of authority of the said last named ordinance, of the complainants herein, that they shall pay to the said City of St. Louis, on all revenue or pay passengers carried by them, the said sum of one mill for each revenue or pay passenger so carried over the lines of said railway owned by the said United Railways Company of St. Louis, in the said City of St. Louis, and operated by the said St. Louis Transit Company.

(26) And complainants show that the said City of St. Louis pretends and claims that the said charge of one mill for each revenue or pay passenger, assumed to be provided for and imposed by said ordinance numbered 21,087, is required to be paid by these complainants in addition to the several sums and taxes and percentages on the gross receipts provided to be paid under the several ordinances granting to the United Railways Company of St. Louis and the St. Louis Transit Company, and their predecessors in right and title, the right to construct, maintain and operate their lines of street railway in the said City of St. Louis.

(27) And these complainants show that the said ordinance numbered 21,087, if by its terms it imposes such additional charge, is illegal, unconstitutional and void, because imposing a tax, charge or consideration for rights, privileges and franchises theretofore granted to and already possessed by the complainants. And said ordinance is in violation of the provisions of the Constitution of the United States, Sec. 10 of Article I thereof, which provides that no state shall pass any law impairing the obligation of contracts, and is in violation of Article XIV of the Amendments to the Constitution of the United States, which provides that no state shall deprive any

39 person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(28) The complainants show that said ordinance, if it imposes the charge of one mill or any other sum upon each revenue or pay passenger carried by the complainants over their lines of street railway in the said City of St. Louis, impairs the obligation of the contracts made by the several ordinances hereinbefore recited, by imposing additional and heavy burdens and charges as a condition of

using, enjoying or exercising the rights and franchises granted by said special ordinances, and, by assumed legislative enactment, deprives these complainants of their property without due process of law, and withholds from them the equal protection of the laws.

(29) And these complainants show that the said so-called license, assumed to be imposed by the said ordinance numbered 21,087, is not a license fee, but is a charge and a compensation assumed to be exacted from these complainants as a consideration for rights and franchises already granted to them by contracts with the City of St. Louis and paid for by complainants, in accordance with the provisions of said contracts.

(30) And these complainants show that the said United Railways Company of St. Louis purchased the properties, and constructed the lines of railway, hereinbefore mentioned, and the said St. Louis Transit Company leased the same, upon the faith of the inviolability of the said contracts between the said companies, and their predecessors in right and title, and the said City of St. Louis, and the bonds and stocks in large amounts of the said companies were negotiated and are now held, by many persons who acquired the same on
40 such faith, and the value of the properties, rights, franchises and privileges of said companies, and of their bonds and stocks, will be greatly impaired and depreciated if said ordinance numbered 21,087 is enforced according to its terms as asserted by the said City of St. Louis.

(31) And these complainants show that the said city of St. Louis intends and threatens to and will, unless prevented by the interposition of this honorable court, assert the said ordinance numbered 21,087 against these complainants, as imposing a present and existing charge upon them of one mill for every revenue passenger carried by them, and thereby cast a cloud upon the title of the properties of these complainants, greatly impairing their credit, and the said ordinance, if enforced according to its terms, will deprive these complainants of revenues amounting approximately to one hundred and fifty thousand dollars per annum, which are absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by them, and to the proper discharge of the obligations imposed upon them by the several special ordinances hereinbefore set forth. And the said city intends and threatens to, and will, unless prevented by the interposition of this honorable court, institute numerous vexatious legal proceedings to compel complainants to comply with the provisions of said ordinance numbered 21,087, in the form of suits to recover the penalties prescribed by said ordinance, and by suits to forfeit their franchise, rights and privileges acquired and held under the provisions of the several special ordinances hereinbefore set forth, and, as a result, complainants will be subjected to great loss, damage, hindrance and annoyance in the conduct of their business, which they are entitled to carry on
41 without such proceedings, suits, annoyances, hindrance, loss, and damage, and will be greatly impaired in their ability to

properly conduct the service assumed by them and imposed upon them by the said special ordinances above mentioned.

(32) All of which actings and doings, and threatened actings and doings, of the said City of St. Louis are contrary to equity and good conscience, and, inasmuch as complainants are without remedy, except in a court of equity, and to the end, therefore, that the complainants may have the relief to which they are entitled, and that the said defendant may answer in the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by complainants, may it please this honorable court to grant unto complainants a writ of subpœna, to be directed to the City of St. Louis, commanding it at a certain time, and under a certain penalty to be therein limited, to appear before this honorable court, then and there full, true, direct and perfect answer to make to all and singular the premises, and complainants pray that the said City of St. Louis may be perpetually restrained and enjoined from in anywise asserting or seeking to enforce said ordinance numbered 21,087, against these complainants, or either of them, and that said ordinance be declared to be null and void; and complainants pray that a temporary restraining order issue out of and under the seal of this honorable court against the said City of St. Louis, its officers and agents, enjoining them, and each of them, from in anywise, by suit or otherwise, asserting or enforcing said ordinance numbered 21,087 against the complainants, or either of them, until the further order of the court in the premises, and that, upon the final hearing hereof, the said injunction be made perpetual. And complainants pray for such other and fur-
42 ther relief as they may be entitled unto and as to the court may seem meet and proper.

BOYLE, PRIEST & LEHMANN,
Solicitors for Complainants.

H. S. PRIEST,
F. W. LEHMANN,
Of Counsel.

STATE OF MISSOURI, *City of St. Louis, ss:*

Murray Carleton, being first duly sworn, upon oath deposes and says that he is the President of the complainant company, the United Railways Company of St. Louis, and is the President of the complainant company, the St. Louis Transit Company; that he has read the foregoing bill of complaint of the said companies and knows the contents thereof, and that the matters and things therein set forth are true, as he verily believes.

MURRAY CARLETON.

Subscribed and sworn to before me by the said Murray Carleton, this 28th day of January, 1904.

My commission expires March 23, 1907.

G. E. TREDWAY,
Notary Public, City of St. Louis, Missouri.

43 Upon the filing of said Bill of Complaint, there was issued out of the Clerk's office of said Court a Subpœna in Chancery, which with the Marshal's return of service endorsed thereon, is in words and figures as follows, to-wit:

(*Subpœna in Chancery.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, sct:

In the Circuit Court of the United States in and for the Eastern Division of Said District.

The President of the United States of America to City of St. Louis, Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, on the first Monday of May next, at the City of St. Louis, then and there to answer the bill of complaint of United Railways Company of St. Louis citizens of the State of Missouri filed against you on the 12th day of April 1904; hereof fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 12th day of April 1904.

Issued at Office, in the City of St. Louis, under the Seal of said Circuit Court, the day and year last aforesaid.

[SEAL.] JAMES R. GRAY, *Clerk,*
By —— ——, *Deputy.*

MEM.—The Defendant to enter appearance in this suit in the Clerk's office, on or before the day at which the writ is returnable otherwise the bill may be taken *pro confesso.*

—— ——, *Clerk,*
By —— ——, *Deputy.*

44 (*Marshal's Return on Subpœna in Chancery.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, sct:

Executed this writ at the City of St. Louis, in the above named District on the 12th day of April, 1904, by delivering a true copy thereof together with a copy of the Bill of Complaint in this cause as certified by the Clerk to Rolla Wells, Mayor of the within named defendant Corporation City of St. Louis.

WM. L. MORSEY,
U. S. Marshal, Eastern District of Missouri.
By E. J. WATSON, *Deputy.*

Marshal's Fees.

2 Service- at $2.00	4.00
Mileage 1 Mile at 6c	.06
Total	$4.06

And on said 12th day of April, A. D., 1904, the following proceedings were had and appear of record in said cause, to-wit:

(*Order to Show Cause.*)

4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

Now come complainants, by their solicitors, and present their Bill of Complaint, praying for an injunction against defendant, and thereupon upon motion of complainants' said solicitors;

Order- that a subpœna issue to defendant as prayed in said bill, returnable to the May Rules 1904; that the said defendant show cause, if any it has, before this Court on the 22nd day of April, 1904 at 10 o'clock A. M. or as soon thereafter as counsel can be heard, why a preliminary injunction should not issue as prayed in said bill and that a certified copy of the foregoing order, together with an attested copy of said bill be served upon said defendant forthwith.

(Signed) ELMER B. ADAMS, *Judge.*

April 12th, 1904.

45 And afterwards, to-wit: on the 22nd day of April, A. D., 1904, there was filed in said cause a Stipulation concerning injunction, which said Stipulation is in words and figures as follows, to-wit:

(*Stipulation.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial Distri. of Missouri.

No. —.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

It being understood between the parties hereto that whereas there is no present intention or disposition on the part of defendant to

take any proceedings prior to the time when the questions presented by the issues in this cause may be determined on the merits by the court, and that hence no occasion exists for the granting of a preliminary injunction even if complainant is entitled thereto, (which is not to be considered as conceded hereby) and because no useful purpose would be subserved by a determination of that question, now therefore it is agreed that no preliminary injunction be issued against defendant and that defendant will take no action that would be improper or unlawful if such preliminary injunction had been granted.

This agreement may be terminated at any time by mutual consent or on giving reasonable notice to the other party in writing.

BOYLE, PRIEST & LEHMANN,
For Complainants.
CHAS. W. BATES,
WM. F. WOENER,
For Defendant.

And afterwards, to-wit: on the 2nd day of May, A. D., 1904, the defendant entered its appearance in said cause, which said Appearance is in words and figures as follows, to-wit:

46 (*Appearance.*)

In the United States Circuit Court, Eastern Division of the Eastern District of Missouri.

No. 4985. Equity.

UNITED RAILWAYS CO. ET AL.
vs.
CITY OF ST. LOUIS.

The undersigned doth enter appearance for defendant in above entitled cause.

CHAS. F. BATES,
WM. F. WOERNER,
Solicitors for Defendant.

And afterwards, to-wit: on the 1st day of June, A. D., 1904, there was filed in said cause an Answer which said Answer is in words and figures as follows, to-wit:

(*Answer.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
THE CITY OF ST. LOUIS, Defendant.

Answer.

Now comes the defendant in the above entitled cause, and for its answer to the complainants' bill in equity, and showing cause why no injunction or other relief prayed for should be granted, states:

(1) This defendant denies each and every allegation in said complainants' bill contained, except as hereinafter specifically admitted.

(2) Defendant admits for the purposes of this cause that the complainants, United Railways Company and St. Louis Transit Company, are corporations created by and existing under the laws of the State of Missouri, each having its principal office and place of business in the locality alleged in the complaint, and states that said complainants are engaged in the business of transporting passengers from one point to another within the City of St. Louis, for hire, on street railways.

(3) Defendant further admits that it is a municipal corporation of the State of Missouri, situated in the Eastern Division of the Eastern District of said State, and states that it, the said city, is duly organized and possessed of its charter, under and in pur-
47 suance of the provisions of the Constitution of said State, as set forth in the Constitution of said State in Article IX, Sections 20 to 25, inclusive, and amendments thereto.

(4) Defendant further states that at all times mentioned in the complaint said Constitution (in Article XII, Section 20) provided that:

"No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

(5) Defendant admits that under Article X, Section 1, of its charter, it is and at all the times stated in the complainants' bill was empowered, through its Municipal Assembly, by ordinance, to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right of

way, or regulating and controlling them after their completion; and also had power to sell the franchise or right of way for such street railroads to the highest bidder, or as a consideration therefor to impose a per capita tax on the passengers transported, or an annual tax on the gross receipts of such railroad, or on each car, and that no street railroad should be incorporated or built in the City of St. Louis except according to the above and other conditions in such charter, and in such manner and to such extent as provided by ordinance.

And that it is and was by Section 2 of Article X of its charter empowered to regulate the time and manner of running cars,
48 and the rates of fare on street railroads then or thereafter to be built, and the sale of tickets and exchange thereof between the several companies, and to tax the property of street railway companies in such manner as might be provided by law.

And that under Section 3 of said article X of said charter it is provided that any street railroad company unable or indisposed to carry forward its business, may notify the Mayor of such indisposition and surrender thereby all chartered franchises as provided by ordinance.

And that by Section 5 of said Article X of said Charter all street railroad companies are and were required to keep the street between the rails and to the extent of twelve inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable, and that portion outside the rails to be of the same material as the street itself.

That complainants took all and every franchise, right or privilege granted or conferred by any ordinance subject to all the foregoing powers, and that the provisions in ordinances referred to in complainants' bill requiring the same and similar obligations to repair are of no more effect than if they had been omitted, and cannot operate as a consideration to the city.

(6) Defendant further states that acting through its Mayor and Assembly, by ordinance, it had (under Article III, Section 26, clause 11th) sole power and authority to grant to persons or corporations the right to construct railways in the city, but at all times subject to the right to amend, alter or repeal any such grant in whole or in part, and to regulate or control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles. Defendant states that any and all
49 privileges, rights, franchises or immunities granted or conferred on complainants or their assignors were knowingly taken subject to the exercise of any of the powers herein set forth whenever defendant saw fit so to do.

(7) And defendant states that having exclusive and plenary power under the Constitution, statutes, charter provisions and laws of the State to grant or withhold its consent to the complainants and their assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw

fit, it did, when complainants desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainants' bill, and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainants and their assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise or right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a license fee for the exercise of such right so conferred on the aforesaid conditions, nor to require payment of a general property tax on complainants' property.

(8) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainants' bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its charter Article III, Section 26, clause 5th, by ordinance, to license, tax and regulate street railroad cars (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21,087, approved March 25, 1903 (being the same the enforcement of which complainants seek to enjoin), which is as follows, to-wit:

"An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the 'Municipal Code of St. Louis' by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

"Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

"SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the 'Municipal Code of St. Louis' are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sec-

tions twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the 'Municipal Code of St. Louis,' all as follows:

"SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

"SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

"SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for
52 transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

"After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report of table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be indicated by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

"The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

"SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall *shall* have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street
53 cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

"SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

"SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

"SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

"SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed,
54 assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

"Approved March 25, 1903."

(9) The defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privilege conferred upon the complainants or any of their assignors; that the obligations assumed by complainants and their assignors in the respective ordinances conferring franchises, rights and privileges were in no sense license fees or license taxes upon street cars, but only conditions under which the city consented that said complainants and their assignors could obtain the valuable rights to the use of its streets, and in no way operated to exempt complainants from the imposition of license taxes and fees for the exercise of their business and the rights conferred by said franchises. On the contrary defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25 each year on each street car operated by any street car company and which license fee and tax complainants had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said companies upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And afterwards further states that said United Railways Company when it accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges,
and purchased the properties, and constructed the lines of
55 railway in said bill mentioned, and at all other times, and
the St. Louis Transit Company when it entered into the alleged lease mentioned in said bill, and at all other times, and all the assignors of either of said companies, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21087.

And defendant specially denies that the amount required to be paid is as alleged by complainants "absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by them, and to the proper discharge of the obligations imposed upon them by the several special ordinances" by them set forth; and defendant states that if said allegations were true it would be owing to the obligations incurred by complainants to pay dividends on preferred stock, interest on mortgages and other heavy expenses based on a fictitious valuation of their assets and capital stock which is by them treated and held out to stockholders, bondholders and others at an amount many millions of dollars above its actual and honest value; and that the business of said companies and their receipts yields very large profits upon the basis of the actual assets invested and yields large profits even upon the fictitious valuation of assets above stated, far in excess of the amounts required for the purposes stated by complainants, but that if complainants are unable or indisposed to continue their said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790*a* of Ordinance 21113, ap-

proved April 6, 1903, passed in pursuance thereof, provide for the surrender of their said franchises and chartered rights, which
56 action complainants have declined to adopt, but on the contrary, in open violation of said ordinance 21087, operate street cars and engage in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10) Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies equally with complainants, and that said St. Louis Transit Company expressly agreed on May 3, 1899, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinance 19738 referred to in said complainants' bill, and without which the same would not have become effective, to accept all obligations therein imposed on said complainants, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways; and said respective assignors of complainants entered into similar agreements as a condition permitting them to assign such rights or franchises to complainants or either of them, wherein said assignors and each of them agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

(11) Wherefore defendant having fully answered, prays to be hence discharged without day and that complainants be required to pay its costs herein incurred.

CHAS. W. BATES AND
WM. F. WOERNER,
Solicitors for Defendant, The City of St. Louis.

57 And afterwards, to-wit on the 6th day of June, A. D., 1904, there was filed in said cause a Reply, which said Reply is in words and figures as follows, to-wit:—

(*Reply.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,

vs.

THE CITY OF ST. LOUIS, Defendant.

Replication of Complainants to the Answer of Defendant.

Come now the United Railways Company of St. Louis and St. Louis Transit Company, complainants herein, and make their replication to the answer of the above named defendant.

The complainants saving and reserving to themselves any and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, for replication thereto state:

That they do, and will ever, maintain and prove their bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be relied upon by these replicants; without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied to, confessed or avoided, traversed or denied is true; all which matters and things these replicants are ready to aver, maintain and prove, as this honorable Court shall direct, and humbly —, as in and by their said bill they have already prayed.

BOYLE, PRIEST & LEHMANN,
Attorneys for Complainants.

58 And afterwards, to-wit: on the 18th day of June, A. D., 1904, there was filed in said cause a Notice terminating obligation under Stipulation, which said Notice is in words and figures as follows, to-wit:—

(*Notice Terminating Obligation under Stipulation.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
THE CITY OF ST. LOUIS, Defendant.

To the United Railways Company of St. Louis and St. Louis Transit Company:

You, and each of you, are hereby notified this June 18/04, that the defendant in the above entitled cause, The City of St. Louis, will, on July 5, 1904, terminate all obligation by it agreed to in a certain stipulation filed in the above entitled cause on the 22nd day of April, 1904.

This notice is given in pursuance of the provision in said stipulation that the understanding or agreement therein set forth may be terminated by either party upon reasonable notice.

The relations between the complainants and the defendant after July 5, 1904 will therefore be the same as if said stipulation had never been entered into, and you may take such measures in the premises as may be deemed fit by you.

THE CITY OF ST. LOUIS,
By CHAS. W. BATES &
WM. F. WOERNER,
Its Solicitors.

59 And afterwards, to-wit: on the 10th day of November, A. D., 1904, there was filed in said cause an Application for Preliminary injunction, which said Application for Preliminary Injunction, is in words and figures as follows, to-wit:

(*Application for Preliminary Injunction.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
v.
CITY OF ST. LOUIS, Defendant.

Motion for Preliminary Injunction.

Come now the complainants herein and move the court for a preliminary injunction, restraining and enjoining the defendant, City of St. Louis, its officers and agents, from in anywise asserting or seeking to enforce any of the provisions of an alleged ordinance of the said City, numbered 21,087, assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or either of them, on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents and each of them, from in anywise, by suit or otherwise, asserting or enforcing said alleged ordinance numbered 21,087 against the complainants, or either of them, until the further order of the court in the premises.

And in support of said motion, the complainants refer to their bill herein and to the various ordinances of the City of St. Louis recited in the said bill, and to the affidavit of James Adkins, filed herewith.

BOYLE, PRIEST & LEHMANN,
Solicitors for Complain-ts.

60 And on said 10th day of November, A. D., 1904, the following among other proceedings were had and appear of record in said cause to-wit:—

4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS ET AL.
vs.
CITY OF ST. LOUIS.

Application for preliminary injunction filed and heard in part—
One affidavit filed.

And afterwards, to-wit: on the 11*st* day of November, A. D., 1904 the following further proceedings were had and appear of record in said cause, to-wit:

4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS ET AL., Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

The application for a preliminary injunction heretofore filed herein is this day further argued by counsel and submitted to the Court.

And afterwards, to-wit: on the 20th day of December, A. D., 1904 the following further proceedings were had and appear of record in said cause, to-wit:

4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

The Court having fully considered complainants' application for a preliminary injunction, doth order that said application be granted, and it is now

Ordered, adjudged and decreed by the Court, that the defendant City of St. Louis, its officers and agents be, and they are hereby enjoined and restrained, until the further order of this Court
61 from in any wise asserting or seeking to enforce any of the provisions of an alleged ordinance of the said City, numbered 21087 assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or either of them, on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis its officers and agents, and each of them, from in anywise, by suit or otherwise, asserting or enforcing said alleged ordinance numbered 21,087 against the complainants, or either of them.

(Signed) ELMER B. ADAMS, *Judge.*

December 20-1904.

And afterwards, to-wit: on the 13th day of October, A. D., 1905, there was filed in said cause Agreed Statement of Facts, which said Agreed Statement of Facts, is in words and figures as follows, to-wit:

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

Agreed Statement of Facts.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, that, for the purposes of this case, the evidence establishes the following facts, subject, however, to objection by either party to the competency and relevancy of any part thereof, to-wit:

(1) That the United Railways Company is a corporation created by and existing under the laws of the State of Missouri, having its principal office and place of business in the City of St. Louis, in the State of Missouri, in the Eastern Division of the Eastern District of said State. That said Company was incorporated March 11th, 1898, under the name of the Central Traction Company, and that on July 8th, 1899, its name was changed to United Railways Company of St. Louis.

62 (2) That the St. Louis Transit Company is a corporation created by and existing under the laws of the State of Missouri, and having its principal office and place of business in the City of St. Louis, in the State of Missouri, in the Eastern Division of the Eastern District of said State.

(4) That the City of St. Louis is a municipal corporation of the said State of Missouri, in the Eastern Division of the Eastern District of said State; and that it, the said City, is duly organized and possessed of its Charter under and in pursuance of the Constitution of Missouri as set forth in Article IX, Sections 20 to 25 inclusive, and amendments thereto.

(5) That at all times mentioned in the complaint there were in force the following provisions of the Constitution of Missouri, to-wit:

(*a*) Article XII, Section 20, being as follows:

"No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

(*b*) Article X, Sections 1, 3, 4, 5, 10 and 11 being as follows:

"SEC. 1. TAXING POWER, HOW EXERCISED.—The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority

granted to them by the General Assembly, for county and other corporate purposes.

"SEC. 3. TAXES FOR PUBLIC PURPOSES MUST BE UNIFORM.—Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

"SEC. 4. TAXES IN PROPORTION TO VALUE.—All property subject to taxation shall be taxed in proportion to its value.

63 "SEC. 5. RAILWAY CORPORATIONS, TAXES FOR WHAT PURPOSES.—All railroad corporations in this State, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock.

"SEC. 10. GENERAL ASSEMBLY SHALL NOT TAX MUNICIPALITIES, WHEN.—The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

"SEC. 11. RATES FOR LOCAL PURPOSES—LIMITS—HOW INCREASED FOR SCHOOLS AND ERECTING PUBLIC BUILDINGS.—Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for state and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under fifty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For cities and town purposes the annual rate on property in cities and towns having thirty thousand inhabitants or more shall not, in the aggregate, exceed one hundred cents on the hundred dollars valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars valuation; in cities

64 and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; and in towns having one thousand inhabitants or less said rate shall not exceed twenty-five cents on the hundred dollars valuation. For school purposes in districts, the annual rate on property shall not exceed forty cents on the hundred dollars valuation; Provided, the aforesaid annual rates for school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation, and in other districts to an amount not to exceed sixty-five cents on

the hundred dollars valuation, on the condition that a majority of the voters who are tax-payers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rates of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city or school district, voting at such election shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for state and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census taken under the authority of the state, or of the United States; said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

(6) That the following statutes were in force at the times stated in the complaint, to-wit:

(*a*) Revised Statutes 1899, Sections 9353, 9354, 9355, as follows:

"SEC. 9353. STREET CAR COMPANIES TO MAKE STATEMENT.—On or before the first day of January in each year, the president or other chief officer of every street railroad company in every city of this state whose line is now or shall hereafter become so far completed and in operation as to run horse cars, electric cars, cable cars or cars propelled by any other device for the transportation of passengers, shall furnish to the state auditor a statement, duly subscribed and sworn to by said president or other chief officer, before some officer authorized to administer oaths, setting out in detail the full length of the line, so far as completed, including branch or leased lines, the entire length in this state, the length of double or side tracks, the length of such line located upon real estate to which such company may have title as right of way, the length of such line located upon the public streets or thoroughfares of any city, together with all cars, motors, grip cars, live-stock, electric trolley wires, cables, cable conduits, power houses, stables and all other property, real, personal or mixed, owned, used or leased on the first day of June, which may be used in or incident to the operation of such street railroad, the length of such line in each county, municipal township and city through or in which it is located, and the cash value of the several items embraced in the statement.

SEC. 9354. TAXES TO BE LEVIED.—The said property returned to the state auditor, as by Section 9353 required, shall be subject to taxation for state, county, municipal and other purposes to the same extent as the real and personal property of private persons, and the same shall be assessed, apportioned, certified and the taxes thereon levied and collected at the time and in the manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property.

SEC. 9355. PURPOSE OF CERTAIN SECTIONS.—It being the purposes of the two preceding sections to make the property of street railroads

in cities assessable and taxable in the same manner which is now or may hereafter be provided by law for the assessment and taxa-
66 tion of other railroad property, all acts and parts of acts inconsistent or in conflict therewith are hereby repealed."

(*b*) Laws 1901 as follows:

"SECTION 1. The franchises (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and of all other similar corporations owning, operating and managing public utilities, and of all quasi public corporations possessing special and peculiar privileges and authorized by law to perform any public service (except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation.

SEC. 2. The state board of equalization in cases of railroads, street, railroads, bridges, telegraph, telephone companies and all other corporations whose property the state board of equalization is now or may hereafter be required to assess, and the county assessor, in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporation, tangible and intangible, in this state, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessor's books, under the head of 'all other property.' "

(7) That at all times in the complaint stated, the Charter of the City of St. Louis contained the following provisions, to-wit:

67 (*a*) Article X, Sections 1, 2, 3, 5, as follows:

"SECTION 1. AUTHORITY OF MUNICIPAL ASSEMBLY IN REFERENCE TO STREET RAILROADS—MAY SELL FRANCHISES OR IMPOSE A PER CAPITA TAX OR A TAX ON GROSS RECEIPTS.—The Municipal Assembly shall have power by ordinance to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right of way, or regulating and controlling them after their completion; and also shall have power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a per capita tax on the passengers transported, or an annual tax on the gross receipts of such railroad, or on each car, and no street railroad shall hereafter be incorporated or built in the City of St. Louis except according to the above and other conditions of this Charter, and in such manner and to such extent as may be provided by ordinance.

SEC. 2. MAY REGULATE RUNNING OF CARS AND RATES OF FARE AND

TAX PROPERTY.—The Assembly shall have power to regulate the time and manner of running cars, and the rates of fares on street railroads now or hereafter to be built, and the sale of tickets and exchange therefor between the several companies and to tax the property of street railroad companies in such manner as may be provided by law.

SEC. 3. SURRENDER OF FRANCHISES, HOW EFFECTED.—Any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indisposition, and surrender thereby all their chartered rights or franchises, in such manner and under such terms and conditions as may be provided by ordinance.

SEC. 5. COMPANIES TO KEEP STREET BETWEEN RAILS IN REPAIR.—Street railroad companies shall keep the street between the rails, and to the extent of twelve inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that por-
68 tion outside the rails shall be of the same material as the street itself, and the Municipal Assembly shall provide by ordinance that bond or other security shall be given by the several companies, conditioned for a compliance with the provision of this section."

(*b*) Article III, Section 26, Clause Eleventh:

"Eleventh.—TO PROTECT RIGHTS OF CITY IN CORPORATIONS—GRANT, REGULATE AND APPEAL RAILWAY FRANCHISES—FREE PASSES ON STREET RAILWAYS PROHIBITED.—To take all needful steps in and out of the state, to protect the rights of the city, in any corporation in which the city may have acquired an interest; to have sole power and authority to grant to persons or corporations the right to construct railways in the city, subject to the right to amend, alter or repeal any such grant in whole or in part, and to regulate and control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles; but every right so granted shall cease, unless the work of construction shall be begun within one year from the granting of the right, and be continued to completion with all reasonable practical speed, and it shall be the cause of forfeiture of the rights and privileges derived from the city, of any railroad company operating its road only within this city, which shall allow any person to ride or travel on its road gratuitously or for less than usual price of fare, unless such person be an officer or employé of such company."

(*c*) Article III, Section 26, Clause Fifth, confers authority, by ordinance, to license, tax and regulate street cars, amongst all other occupations, business and trades, being as follows:

"Fifth.—TO LICENSE, TAX AND REGULATE VARIOUS KINDS OF BUSINESS, ETC.; FIX RATES FOR CARRIAGES, DRAYAGE, ETC.; REGULATE WIDTH OF TIRES—TO SUPPRESS CERTAIN OCCUPATIONS AND AMUSEMENTS.—To license, tax and regulate lawyers, doctors, doctresses, undertakers, dentists, auctioneers, grocers, merchants,
69 retailers, hotels, boarding houses, tenement houses, office buildings, public buildings, public halls, public grounds, concerts, photographists, artists, agents, porters, runners, drummers, public lecturers, public meetings and shows, real estate agents, and

brokers, financial agents and brokers, horse and cattle dealers, patent-right dealers, inspectors and gaugers, stock yard proprietors, examiners of titles, conveyancers, mercantile agents, insurance companies and insurance agents, bankers, banking or other corporations or institutions, telegraph companies or corporations, street railroad cars, livery and sale stables, hackney carriages, private carriages, barouches, buggies, wagons, omnibuses, carts, drays and other vehicles, and all other business, trades, avocations or professions whatever; to fix the rates for carriage of persons, and of wagonage, drayage and cartage of property, and regulate the width of the tires of all vehicles for heavy transportation; to license, regulate, tax or suppress ordinaries, hawkers, peddlers, brokers, pawnbrokers, money changers, intelligence offices, public masquerade balls, street exhibitions, dance houses, fortune tellers, pistol galleries, lottery ticket dealers, corn doctors, lock, private and venereal hospitals, museums and menageries, equestrian performances, horoscopic views, lung testers, muscle developers, magnifying glasses, billiard tables or any other tables or instruments used for amusement, circuses, operatic, theatrical and other exhibitions, shows and amusements; saloons, beer houses, tippling houses, dram shops, and gift enterprises; and to suppress prize fights, coon fights, dog fights, chicken cock fights, gaming or gambling houses; and *do* suppress bawdy and disorderly houses, houses of illfame and of assignation; to provide for and enforce the registration of all births, marriages or deaths; to license, tax, regulate or suppress all occupations, professions and trades not hereinbefore enumerated, of whatever name and character."

(*d*) That the said city, through its municipal assembly and Mayor, did enact Ordinance 21087, approved March 25,
70 1903 (being the ordinance the validity of which is here questioned and the enforcement of which complainant seeks to enjoin herein), which is as follows, to-wit:

(21,087.)

"An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-

six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

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SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report of table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

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The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyon

the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed; and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

73 SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and Thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections

be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903."

(8) That at the time of the institution of this cause the United Railways Company was incorporated and was empowered by its articles of incorporation to construct, maintain and operate street railways in the said City of St. Louis, and that Ordinance 19352 referred to in the complaint is as follows:

74 (19,352.)

"An ordinance authorizing the Central Traction Company of St. Louis to construct, operate and maintain a single and double track passenger railroad on, over and along and across certain streets, avenues, highways, railways, bridges and city blocks in the City of St. Louis, and to operate its line of railroad by electric power, and to run over the tracks of other roads, and to acquire and convey by lease, purchase or sale its own property and franchise or the property and franchises of other street railway companies in the City of St. Louis, and to operate same.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority is hereby given and granted unto the Central Traction Company of St. Louis, incorporated under the laws of the State of Missouri, its successors or assigns, to lay down, construct, operate and maintain a single and double track street railway on, over and along the route as described in section two of this ordinance, on, over and across all railroad tracks, streets, alleys, highways, bridges and city blocks and other places along said route hereinafter mentioned, together with all necessary switches, curves and sidings, connections with its power houses, spurs and turnouts, and all necessary conduits, wires and poles for the purpose of connecting its power houses with lines of railway; and to cross any railway tracks in the line of its route, and to make such amicable running arrangements as they may be able to do with such railway companies whose tracks they may intersect or cross, and connect with and run on such tracks, and for that purpose, if necessary, to sell, lease or otherwise convey their property, privileges and franchises; and when so sold, leased or conveyed the company acquiring the same shall have and enjoy all the rights and privileges herein granted; and to acquire by lease or purchase the property and franchises and privileges of other street railway com-
75 panies in the City of St. Louis, and to operate same, and to permit other street railroad companies in the City of St. Louis to run over the tracks of the Central Traction Company of St. Louis, with the consent and agreement of said company.

SEC. 2. Beginning with a single track at the west line of Twelfth street, at its intersection with Pine street, thence south on Twelfth street, along, over and upon the west track of the Union Depot Railroad Company in Twelfth street, or with a twin track on said west

track of the Union Depot Railroad Company to Walnut street, thence east on Walnut street to Eighth street, thence south on Eighth street to Clark avenue, thence east on Clark avenue to Fourth street, thence south along, over and upon the tracks of the People's Railway Company in Fourth street to Chouteau avenue, and along, over and upon the tracks of the People's Railway Company in Fourth street, north from Clark avenue to Morgan street, and with a single track east on Market street from Fourth street to Main street, thence north on Main street to Washington avenue, thence west on Washington avenue to Third street, thence north on Third street to Lucas avenue, thence west on Lucas avenue over and along the track of the Union Depot Railroad Company, between Broadway and Sixth street, or with a twin track contiguous to the track of the Union Depot Railroad Company, between Broadway and Sixth street, and to and into Eleventh street, thence south on Eleventh street, over and along the track of the Benton-Bellefontaine Railway Company, or with a twin track contiguous to the track of said Benton-Bellefontaine Railway Company to Washington avenue, thence west in Washington avenue, either with twin rails or along, over and upon the north track of the Lindell Railway Company to Twelfth street, thence south on Twelfth street to Pine street, thence west into Pine street, and with a double track west on Pine street from Twelfth street to Twenty-first street, thence south on Twenty-first street to and across
76 Chouteau avenue, thence south across city blocks numbers two thousand two hundred and seventy-six and two thousand two hundred and seventy-seven west to Hickory street; and should said Central Traction Company of St. Louis not be able to secure the right to cross said city blocks numbers two thousand two hundred and seventy-six and two thousand two hundred and seventy-seven west from the owners thereof, then said Central Traction Company of St. Louis shall have the right to run its cars westward on Chouteau avenue from Twenty-first street to Missouri avenue along, over and upon the tracks of the Lindell Railway Company in Chouteau avenue, or with twin tracks contiguous to said Lindell Railway Company tracks, and to lay a single track south on Armstrong avenue from Chouteau avenue to Hickory street, and to lay a single track on Missouri avenue south from Chouteau avenue to Rutger street, thence west on Rutger street to and into Caroline street, thence west on Caroline street to and into Ohio avenue, and with a double track on Hickory street west from a point at which the tracks of the said Central Traction Company of St. Louis enters Hickory street, if said company secures the right to lay its tracks across city blocks numbers two thousand two hundred and seventy-six and two thousand two hundred and seventy-seven west from the owners thereof, otherwise from Armstrong avenue to Missouri avenue, thence with a single track on Hickory street from Missouri avenue to and into Ohio avenue, thence south on Ohio avenue to Caroline street, and with a double track on Ohio avenue from Caroline street south to Shenandoah avenue, thence west on Shenandoah avenue to Nebraska avenue, thence south on Nebraska avenue to Itaska street, thence west on Itaska street to Grand avenue, thence south on Grand avenue to

Carondelet Park; and with a double track on Magnolia avenue west from Nebraska avenue to Kingshighway, crossing Grand avenue diagonally northward, thence westward and northward across Kingshighway into Columbia avenue, thence west on Columbia
77 avenue to the Old Manchester road, thence west on Old Manchester road to Wood street, thence south on Wood street to Arsenal street, thence west on Arsenal street to Ivanhoe avenue, thence south on Ivanhoe avenue to Hancock avenue, thence west on Hancock avenue to McCausland avenue, thence south on McCausland avenue to Lindenwood place, thence west on Lindenwood place to the city limits; and with a double track west on Wyoming street from Nebraska avenue to Spring avenue, thence south on Spring avenue to Gravois avenue, thence southward on Gravois avenue to the city limits; and with a double track on Wyoming street westward from Spring avenue to the Morgan Ford road, thence south on the Morgan Ford road to and into Gravois avenue, and with a double track on Wyoming street, eastward from Nebraska avenue to Thirteenth street, thence north of Thirteenth street to Lynch street, thence east on Lynch street to Eleventh street, thence north on Elventh street to and into Ann avenue; and with a double track east on Shenandoah avenue from Ohio avenue to Thirteenth street, thence north on Thirteenth street to Ann avenue, thence east on Ann avenue to Broadway, thence north on Broadway along, over and upon the tracks of the St. Louis Railroad Company, or with twin tracks contiguous to said St. Louis Railroad Company's tracks to Russell avenue, thence east on Russell avenue to Second street; and north on Twenty-first street with a double track from Pine street to O'Fallon street, thence east on O'Fallon street to Twentieth street, thence north on Twentieth street to Palm street, thence west on Palm street to Parnell street, thence north on Parnell street to the Natural Bridge road, thence west on Natural Bridge Road either with twin tracks or along, over and upon the tracks of the Union Depot Railroad Company, and the tracks of the Citizens' Railway Company, the tracks of the Cass Avenue and Fair Grounds Railway Company to Clay avenue, and with an additional track connecting with the south track of the Mound City division of the Union Depot Railroad Company at the east line of Grand avenue, and extending west on the south side of the Natural
78 Bridge road to and connecting with the south track of the Cass Avenue and Fair Grounds Railway Company at Spring avenue, and with a double track northward on Florissant avenue from Palm street to and into Carter avenue, thence westward on Carter avenue to Taylor avenue, thence northward on Taylor avenue to the Bircher road, thence westward on the Bircher road to Rosalie street, thence westward on Rosalie street to its terminus, thence westward along, over and upon the first street opened south of and parallel to Florissant avenue to the city limits; and with a double track on Calvary avenue from the point at which Calvary avenue sh-ll intersect the route of said Central Traction Company of St. Louis, when extended as above described, northward and eastward to Broadway, thence northward either with twin tracks or along,

over and upon the tracks of the Baden and St. Louis Railroad Company to its terminus; thence along Broadway to Hornby avenue, and with a double track on Athlone avenue from Carter avenue to Florissant avenue, and with a double track east on Benton street from Twentieth street to Nineteenth street, thence south on Nineteenth street to North Market street, thence east on North Market street to First street, with a single track on each side of Jackson place, and with a double track west from Twentieth street on Benton street to Garrison avenue, thence north on Garrison avenue to Montgomery street, thence west on Montgomery street to Grand avenue, thence crossing Grand avenue diagonally southward to and into Cottage avenue, thence west on Cottage avenue to Warne avenue, thence south on Warne avenue to Garfield avenue, thence west on Garfield avenue to Whittier street, thence north on Whittier street to North Market street, thence west on North Market street to Marcus avenue, thence north on Marcus avenue to Cottage avenue, thence west on Cottage avenue to Euclid avenue, thence south on Euclid avenue to Spalding avenue, thence west on Spalding avenue, either with twin tracks or along, over and upon the tracks of the Taylor Avenue Railway Company to Kingshighway, thence
79 south on Kingshighway to North Market street, thence west on North Market street to the city limits.

SEC. 3. And the Central Traction Company of St. Louis may also construct, maintain and operate all conduits, curves, switches, sidings, crossings, turnouts and connections, and may make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy; provided, however, that such excavations, embankments, bridges or culverts shall in no way impede, interfere with or affect the general use of any streets or avenues wherein they may be placed; nor shall they in any way affect the grade of any such street or avenue, and the gauge of the tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

SEC. 4. Said Central Traction Company of St. Louis, its successors and assigns, may operate its railroad along the route authorized herein by electricity. All that portion of said railroad east of Twenty-second street, and between Wash street on the north and Spruce street on the south, shall be constructed and operated by the underground conduit system, and the remainder of said railroad may be operated either by the storage battery, the underground conduit, or by the overhead wire system through overhead and supplementary ground circuit; and for this purpose the poles, wires or other appliances necessary or convenient in the use of electricity as a motive power may be erected and placed along the curbs of all streets on, over, across or along which said railroad may at any place be operated under this ordinance, and feed wires for conveyance of current may be constructed and maintained along the line of any of the streets in which said company is authorized

to maintain its tracks and from its power house to the line of its road. Said wires to be not less than twenty feet above the surface of the streets, and said poles to be of iron, and at such dis-
80 tance as may be required by the Board of Public Improvements under whose supervision said work is to be done; and said Central Traction Company of St. Louis shall have the right to make all needful and convenient changes from time to time by the construction and erection of all needful and convenient curves, trenches, excavations, sewer connections, machinery, poles and wires or conduits in any of the streets or highways in, along, over or across which its railroad may be constructed, maintained or operated; provided, that said work shall be done subject to the supervision of the Board of Public Improvements. Said Traction Company shall cause the grade of its railroad and tracks to conform to the grades of the streets, now or hereafter established, over which it constructs its railroad, and at all points where said railroad crosses any of the streets of the City of St. Louis.

SEC. 5. Said Central Traction Company of St. Louis shall commence the work of construction within six months after the approval of this ordinance, and have the work completed, and have the railroad authorized herein in operation in the transportation of passengers in cars within three years thereafter; provided, that if said Central Traction Company of St. Louis shall not in good faith have commenced the work of construction on its road within six months after the approval of this ordinance, then, and in that event, this ordinance shall be null and void, and all rights thereunder shall cease and determine; and if said Central Traction Company of St. Louis shall not have the work completed and have the railway authorized herein in operation in the transportation of passengers in cars within the time herein provided for the completion of said road, then, and in that event, the right to construct so much of said work as shall not then be constructed shall cease and determine; and, provided, that if on any portion of the route described in section two of this ordinance, any of the streets should, after the end of three years aforesaid, remain unopened, and said Traction Company having constructed its railway to the point of said unopened
81 street, then said Traction Company shall continue the construction of its railway, beginning the work thereon within sixty days after the completion of the opening thereof, and thence to the terminus of that portion or branch of its line on which such street opening may be located, and complete the same wihin six months thereafter. And should said Central Traction Company of St. Louis, its successors or assigns, be restrained at any time before or during the construction of its railroad by any legal process, the time actually lost thereby shall be added to the time authorized therein for the commencement of the work of construction of said railroad, and for the completion of said railroad.

From and after the expiration of the time allowed for the completion of said railroad, said Traction Company shall run passenger cars over its line of railroad every day in the year during the life

of this franchise, as follows: From six o'clock a. m. to one o'clock a. m. at intervals not exceeding fifteen minutes, and from one o'clock a. m. to five-thirty o'clock a. m. at intervals of not more than one hour.

Said Central Traction Company of St. Louis shall not run its cars on the lines of railway running east from the intersection of Eighteenth and Pine streets at a greater speed than ten miles an hour, nor greater than fifteen miles an hour on any other of the streets on which the right-of-way is herein granted.

The temporary suspension or the temporary use of horse power in drawing the cars in the event of the derangement of the machinery or other extraordinary emergency, shall not be deemed a violation of this ordinance.

A fare of five cents shall be charged for passengers of twelve years of age and over, and one-half of said fare for persons under twelve and over five years of age. Children's tickets shall be sold by conductors on the car at the rate of two tickets for five cents. Transfers shall be given so as to transport passengers by a continuous trip from any point on the system to any other point on the system.

82 SEC. 6. Said Central Traction Company of St. Louis shall within sixty days after the approval of this ordinance file with the City Register its written acceptance of all the provisions hereof, and shall file its bond with said City Register, with sufficient securities, to be approved by the Mayor and Council, in the penal sum of Two Hundred and Fifty Thousand Dollars, that it will save said city harmless from any claim or damages done to persons or property arising from or out of the construction of said tracks, and that it will comply with all the requirements and conditions of this ordinance; and unless said acceptance and bond are filed as aforesaid, then all the privileges herein granted shall cease and said ordinance shall become null and void.

SEC. 7. The said Traction Company shall keep the streets between the rails, the space between the tracks where there is a double track or more, and to the extent of twelve inches outside of each rail in good repair, as nearly on the level with such rails as practicable, and that portion outside of the rails and between the rails and the space between the tracks where there is a double track or more shall be of a material similar to that used in the street over which it runs or crosses; provided, however, that a better material may be used between the rails if approved by the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the construction, repairing or reconstruction of said street; and, provided further, that all switches, curves and railway crossings, the spaces between the rails, and one foot outside of the rails shall be paved with granite and maintained and repaired with granite when so demanded by the Board of Public Improvements.

The said Central Traction Company of St. Louis shall run vestibuled cars during the winter months of each year.

SEC. 8. Before beginning the construction of the railroad authorized under this ordinance the said Traction Company shall
83 file in the office of the Board of Public Improvements a plan of the location of its tracks and profile of the same; and should said Board direct any changes in the plan and profile not inconsistent with the provisions of this ordinance, such changes shall be made by said Traction Company.

The rails shall be such as are authorized by the ordinance of the City of St. Louis.

This franchise shall continue in force for a period of fifty years from the date of its passage.

In consideration of the rights and franchise granted in this ordinance to the Central Traction Company of St. Louis, said Traction Company shall pay to the City of St. Louis as follows: Semi-annually on the first of January and July of each year, beginning from the time herein authorized for the completion of said railway, for the first ten years, Ten Thousand Dollars per annum; for the second ten years, Fifteen Thousand Dollars per annum; for the third ten years, Twenty Thousand Dollars per annum; for the fourth ten years, Twenty-five Thousand Dollars per annum; and for the remainder of the time of this franchise, Thirty Thousand Dollars per annum.

SEC. 9. Said Traction Company shall, at its own expense, restore the streets disturbed by it in the construction of its road to the same condition such streets were in before they were disturbed, and under the direction, supervision and to the satisfaction of the Street Commissioner. All paving material removed by said Traction Company in the construction of its railroad shall remain the property of the City of St. Louis, and may be used by the said Traction Company in restoring the streets; or, if not so used, shall be the property of the City of St. Louis.

This bill, viz, House Bill No. 451, "An ordinance authorizing the Central Traction Company of St. Louis to construct, operate and maintain a single and double track passenger railroad on, over and along and across certain streets, avenues, highways, railways, bridges, and city blocks in the City of St. Louis, and to
84 operate its line of railroad by electric power, and run over the tracks of other roads, and to acquire and convey by lease, purchase or sale its own property and franchises or the property and franchises of other street railway companies in the City of St. Louis, and to operate same," vetoed by his Honor, the Mayor, April 8th, 1898, passed by the House of Delegates April 12th, 1898, the objections of the Mayor thereto notwithstanding, by the following vote: Ayes—25. Noes—3.

Attest:

HIRAM LLOYD,
Speaker House of Delegates.

Attest:

GEO. H. MARTIN,
Clerk House of Delegates.

This bill, viz., House Bill No. 451, "An ordinance authorizing the Central Traction Company of St. Louis to construct, operate and maintain a single and double track passenger railroad on, over and along and across certain streets, avenues, highways, railways, bridges and city blocks in the City of St. Louis, and to operate its line of railroad by electric power, and to run over the tracks of other roads, and to acquire and convey by lease, purchase or sale its own property and franchises or the property and franchises of other street railway companies in the City of St. Louis, and to operate the same," vetoed by his Honor the Mayor April 8th, 1898, passed by the City Council April 12th, 1898, the objections of the Mayor thereto notwithstanding, by the following vote: Ayes—9. Noes—3. Absent—1.

Attest:

E. F. W. MEIER,
President of the Council.

Attest:

CHAS. R. GRAVES,
Secretary of the Council.

St. Louis, April 13th, 1898.

I hereby certify that at 10 o'clock 25 minutes a. m. this day I received from Geo. H. Martin, Clerk of the House of Dele-
85 gates, this bill, which is known as House Bill No. 451, and which I now number as ordinance No. 19,352.

Attest:

HENRY BESCH,
City Register."

And that pursuant to the authority therein conferred said United Railways has, by construction and purchase, acquired a large system of street railways in the said City of St. Louis, aggregating 316 miles.

(9) That at the time of the institution of this suit the St. Louis Transit Company was incorporated for the purpose of acquiring, and authorized by its Articles of Incorporation to acquire by lease or otherwise, lines of street railway in the City of St. Louis, and to maintain and operate the same, and that, pursuant to such purposes and authority, and by virtue of an ordinance of the said City of St. Louis, numbered 19,738, and approved March 20th, 1899, and of the other ordinances of the said City hereinbefore and hereinafter mentioned, it has leased the lines of street railway in the City of St. Louis belonging to the said United Railways Company, and was engaged in operating the same.

(10) That among the lines of street railway in said city, owned by said United Railways Company and operated by the St. Louis Transit Company, are lines formerly known as the Citizens' Railway, originally constructed in the year 1859, and extended from time to time on certain streets in said City of St. Louis under ordinances of said City authorizing such construction and extension by the Citizens' Railway Company, a corporation created by and ex-

isting under the laws of the State of Missouri. That Ordi-
86 nance 11,528, approved December 27, 1880, referred to in Clause 7 of the complaint, is as follows:

(11,528.)

"An ordinance authorizing the Citizens' Railway Company to extend its tracks, to maintain and operate its present routes in connection therewith for a single fare, and to have an extension of its rights and franchises.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Citizens' Railway Company as organized under the laws of this state, its successors or assigns, is hereby permitted to extend its road from a point six hundred and sixty feet west of Grand avenue with a single or double track along Easton avenue and the St. Charles Rock Road to the Six-Mile House; also with a single or double track along Grand avenue from Easton avenue to the Fair Grounds, and also with a single or double track from the St. Charles Rock Road along Papin avenue to the Natural Bridge plank road, thence along said road to Kingshighway, with all necessary turnouts and switches, and in conjunction therewith is confirmed in its rights, franchises and privileges, and empowered to maintain its road and operate its cars from its terminus on Fourth street along Morgan street and Garrison avenue to Easton avenue, and along Fourth street, Franklin avenue and Easton avenue to unite with said extension along the St. Charles Rock Road; and shall have the right, under such reasonable regulations as the company may make, to make a transfer of passengers at any point between Grand avenue and its terminal points.

SEC. 2. The extension of said track or tracks shall be made to conform to the grade which the city may establish, and laid along the center line of St. Charles Rock Road with flat street rail having
87 a flange of two and a half inches wide and at the prescribed gauge, and said rails shall be laid with the flange towards the center of the track.

The Citizens' Railway shall be connected and operated as far as the Six-Mile House on the St. Charles Rock Road within six months from and after the acceptance of this ordinance. To effect and establish said extension, any of the franchises, privileges or rights of way of the Fair Grounds, and Suburban Railroad Company which may be transferred to the Citizens' Railway Company, or surrendered by notification thereof given to the Mayor of the City of St. Louis, shall become possessed and be enjoyed by the Citizens' Railway Company, its successors or assigns, as fully as though herein specially granted.

The Citizens' Railway Company may operate its line along the side of the St. Charles Rock Road on any existing track which it may acquire until its track or tracks along the center line of said road are constructed.

SEC. 3. The Citizens' Railway shall not charge and collect more than a single fare of five cents in tickets or seven cents in cash when tickets are not used, over its road or any part thereof between Fourth and Morgan streets and its terminal points at the Six-Mile House on the St. Charles Rock Road, at the Kingshighway and Natural Bridge plank road and at the Fair Grounds. Its cars shall be operated along the extension designated at intervals not exceeding fifteen minutes from six a. m. to nine a. m. and from five p. m. to eight p. m. and at intervals not exceeding thirty minutes from nine a. m. to five p. m. and from eight p. m. to 11 p. m. for the first ten years; thereafter subject to be regulated by the Municipal Assembly.

SEC. 4. The Citizens' Railway Company may abandon its track or tracks on Papin avenue from the St. Charles Rock Road to Kennerly avenue, under the following conditions: Provided said company first construct their road with a single track along Prairie and Baltimore avenues from Easton avenue to Ferdinand, Cottage
88 or Lincoln avenues, thence westwardly to Glendale avenue, thence northwardly on Glendale avenue to Kennerly avenue, thence westwardly on Kennerly avenue to Papin avenue, and that said tracks shall be constructed under the supervision and to the satisfaction of the Street Commissioner.

SEC. 5. In consideration of the rights and franchises hereby granted, confirmed and extended to the Citizens' Railway Company, its successors and assigns, the said company shall pay to the City of St. Louis on the first day of July and the first day of January of each year until and including January 1st, eighteen hundred and eighty-four, the sum of twenty-five hundred dollars, and on the first day of July and the first day of January of each year after January first, eighteen hundred and eighty-four, until the expiration of the time for which this franchise is granted the sum of five thousand dollars, which shall be in addition to all taxes as now or hereafter prescribed by law. This ordinance shall remain in force and effect for the term of thirty years from and after its passage, but a failure on the part of said company or its successors and assigns to pay any installment aforesaid within thirty days after the same becomes due and payable shall render this ordinance void, and all the rights and franchises hereby granted, confirmed and extended to the Citizens' Railway Company shall revert to the City of St. Louis.

SEC. 6. It is the purpose of this ordinance to procure the construction of a street railroad from Fourth and Morgan streets to the points above stated under one management for a single fare, as provided for in the third section of this ordinance, both to and from the points above stated, and any transfer or mortgage of the franchise or of the property thereunder held or acquired shall cover and embrace the whole of the property and franchises of the Citizens' Railway Company between the points above mentioned, and a failure to operate the road over the entire distance between the above named points, or a transfer of the property or franchise or any part thereof, ex-
89 cept as above provided, or a failure to comply with any of the provisions of this ordinance by this company, shall work a forfeiture of this franchise.

SEC. 7. The Citizens' Railway Company shall not be entitled to any of the rights or franchises granted by this ordinance unless within thirty days from the approval thereof it file with the City Register its written acceptance of the terms and conditions of said ordinance and also its penal bond in the sum of two hundred thousand dollars, payable to the City of St. Louis, to be approved by the Mayor and Council, conditioned that said Citizens' Railway Company shall and will perform and comply with all the terms and conditions of this ordinance and keep the streets between the rails of said company and to the extent of twelve inches outside of each rail in perfect repair and as nearly on a level with such rails as practicable and in all particulars comply with and observe the charter and ordinances of the City of St. Louis, relating to street railroads, and that they will conform to any ordinance now or hereafter passed enforcing section six of article ten of the city charter.

SEC. 8. It is expressly understood that by the acceptance of the provisions of this ordinance by the Citizens' Railway Company said company waive all rights they may have to streets within three blocks of this railway claimed under the act of the General Assembly approved January 16, eighteen hundred and sixty.

SEC. 9. The space between the rails at the curves and the space between the tracks at the curves shall be paved with stone or wood blocks, or some other material equally as good, and to the satisfaction of the Street Commissioner.

Approved Dec. 27, 1880."

That ordinance 17,183, approved April 1, 1893, is as follows:

90 (17,183.)

"An ordinance authorizing the Citizens' Railway Company to reconstruct its tracks with double tracks on Marcus avenue, and to connect its tracks on Natural Bridge road with the tracks of the Cass Avenue Railway Company, and to operate the same with electricity, and granting to it an extension of its rights, privileges and franchises.

Be it ordained by the Municipal Assembly of the City of St. Louis as follows:

SECTION 1. The Citizens' Railway Company, its successors and assigns, are hereby authorized to reconstruct its tracks with double tracks on Marcus avenue, from Easton avenue to Natural Bridge road, and to connect its tracks on Natural Bridge road with the track of the Cass Avenue Railway Company, and maintain and operate it railway thereon with electricity by overhead wires, and for that purpose to erect and maintain all necessary switches, turnouts, poles, ...es, and feed wires, upon the streets, to the satisfaction of the Board of Public Improvements. Said construction to begin within six months from the approval of this ordinance, and to be completed within two years thereafter.

SEC. 2. Said Citizens' Railway Company is hereby authorized and

empowered to change its motive power from cable to electricity carried on wires overhead, and for that purpose may erect such poles and wires as may be necessary. Said poles and wires to be erected under the direction of and to the satisfaction of the Board of Public Improvements. The wires on said poles to be not less than twenty feet above the surface of the streets. The slot-rails and man-hole frames and covers to be removed and the space between the rails repaved to the satisfaction of the Street Commissioner. This change to be begun within six months after the approval of this ordinance, and completed within two years thereafter.

SEC. 3. Said Citizens' Railway Company shall operate its
91 cars east of Grand avenue at a rate of speed not exceeding ten miles per hour, and on and west of Grand avenue at a rate of speed not exceeding fifteen miles per hour.

SEC. 4. The change from cable to electricity being completed, cars will run through from Fourth street to the city limits without transfer of passengers and passengers shall be carried from any one point of its line, for a single fare of five cents per person over twelve, and two and one-half cents for children over five years and under twelve years of age. Children's tickets shall be sold by conductors on the cars at the rate of two tickets for five cents.

SEC. 5. All the rights, privileges and franchises hereinbefore granted the Citizens' Railway Company, under city ordinances and now belonging to it, and by this ordinance granted, are hereby extended to it, its successors and assigns, for the period of twenty-five years from and after the twenty-seventh day of December, 1910; provided, however, that nothing contained in this ordinance shall be so construed as to relieve the Citizens' Railway Company from any obligation or compensation, as now contained in other ordinances granted to them.

The same conditions of payments to the city as printed in section five of ordinance No. 11,528 shall remain and continue in force and effect during the time of the extension, as herein provided.

SEC. 6. Said ordinance shall not be in force until said Citizens' Railway Company shall file with the City Register the acceptance of this ordinance, and shall have entered into a bond to the City of St. Louis in the sum of ten thousand dollars, to be approved by the Mayor and Council, that it will save said City of St. Louis harmless from all liability on account of damages sustained by any person during the construction of said extension.

Approved April 1st, 1893."

That said two ordinances were accepted by the Citizens'
92 Railway Company for itself, its successors and assigns, and on the 30th day of September, 1899, the United Railways Company purchased, and by proper deed of conveyance acquired, all the rights, property and franchises of the said Citizens' Railway Company, including the right to maintain and operate its lines of railway in the said City of St. Louis, so far as the same could be acquired by deed from said company, and on the same day leased the same to the St. Louis Transit Company for a term ending April 1st, A. D. 1939. And the said lines of street railway have been main-

tained and operated continuously since the same were constructed by the Citizens' Railway Company, and by its successors, the United Railways Company and the St. Louis Transit Company, and all the conditions of the aforementioned ordinances have been kept by the said companies, and all the payments required by the said ordinances to be made by them have been made as the same became due respectively.

(11) That amongst the lines of street railway owned by the said United Railways Company and operated by said St. Louis Transit Company are lines formerly known as the Southwestern Railway, originally constructed in the year 1893 on Chippewa street and other streets in the City of St. Louis, under an ordinance of said City numbered 17,185, approved April 1st, 1893, by the Southwestern Railway Company, a corporation organized under the laws of the State of Missouri, said ordinance and Ordinance No. 19,738 are as follows, to-wit:

(19,738.)

"An Ordinance for the greater convenience and further transportation of passengers on the railways of the Cass Avenue and
93 Fair Grounds Railway Company, Citizens' Railway Company, Southwestern Railway Company, Southern Electric Railroad Company, St. Louis Railroad Company, and Baden and St. Louis Railroad Company, respectively, and for that purpose authorizing change of motive power, the connection of railway tracks respectively, and the running of cars of one or more of said companies on the tracks of one or more of the other companies, and of such companies whose tracks may be intersected by the tracks of either of said companies, with authority to run ambulance, funeral, mail and express cars, and also authorizing if found desirable for said purpose, the sale, conveyance or lease of the rights, privileges, franchises and property of one or more of said companies, and of the companies whose tracks may be so intersected, to another of said companies or to the St. Louis Transit Company, its successors and assigns, and the acquisition thereof, with authority to hold, enjoy and operate the same for a period expiring with the term of the franchise of the said Southern Electric Railroad Company, as provided in City Ordinance Number fourteen thousand, eight hundred and thirty-seven, and to regulate the speed of cars, and authorizing the Southwestern Railway Company to extend its tracks on Gravois avenue from its intersection with the Morganford road to Bates street, and there to connect with the tracks of the Southern Electric Railroad Company, and extending the time for the completion of its tracks from Grand avenue, on Chippewa street and Gravois avenue to the Morganford road, and the Southern Electric Railroad Company to extend its route on Loughborough avenue, Gravois avenue and Bates street, and to operate the same.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Whereas, it will be to the great advantage of passen-

gers to have the tracks of the Cass Avenue and Fair Grounds Railway Company, Citizens' Railway Company, Southwestern
94 Railway Company, Southern Electric Railroad Company, St. Louis Railroad Company, and Baden and St. Louis Railroad Company, respectively, connected, and the cars of said companies respectively, run on the track or tracks of others of said companies.

Therefore, the St. Louis Railroad Company is hereby authorized to connect its track on Broadway with the tracks of the Citizens' Railway Company at Morgan street and Franklin avenue, and to connect its tracks on Broadway and Walnut street with the tracks of the Cass Avenue and Fair Grounds Railway Company, and its tracks at Broadway and Elm street with the tracks at that point, and to connect its tracks at or near Broadway and Keokuk streets with the tracks of the Southern Electric Railroad Company; and authority is given to the Southwestern Railway Company to connect its tracks with the Southern Electric Railroad Company at Chippewa street and Jefferson avenue; and thereupon with the consent of the St. Louis Railroad Company and said Citizens' Railway Company, Cass Avenue and Fair Grounds Railway Company, Baden and St. Louis Railroad Company, Southern Electric Railroad Company and Southwestern Railway Company, respectively, the cars of said companies respectively, may, be run on each other of said companies' tracks respectively, and upon the tracks of any railway company with which any of the tracks of said companies may intersect, as may be agreed upon between them respectively, and with such companies whose tracks may be so intersected, and for that purpose, authority is hereby given to make desirable curves and switches and connections therewith and the cars shall be run at the same rate of speed on the tracks on which they may run as is now provided by ordinance for the running of cars thereon.

SEC. 2. The Southwestern Railway Company, its successors and assigns, is hereby authorized to extend its tracks on Gravois avenue from its intersection with the Morganford road to Bates street, and there to connect with the tracks of the Southern Electric
95 Railroad Company, and the time for extending the tracks of the Southwestern Railway Company, from Chippewa street and Grand avenue on Chippewa street and Gravois avenue to the Morganford road, as provided for in Ordinance seventeen thousand, one hundred and eighty-five, is hereby extended for the period of two years from the approval of this ordinance, and the Southern Electric Railroad Company, its successors and assigns, are authorized to extend its railway and operate its cars beginning with connections with its present double track on Broadway and its intersection with Bates street; thence with double tracks on Bates street to Gravois avenue; thence south on Gravois avenue to Loughborough avenue; thence east on Loughborough avenue with single or double tracks with necessary crossovers and turn-outs to connections with its tracks at present on Broadway, with power to erect poles and string wires in the same manner as is now authorized on other parts of its road, and to cross the tracks of any other railway company on its said

route, and the cars thereon shall be operated at a speed not exceeding fifteen miles an hour.

In case street railway track or tracks shall be constructed on Gravois avenue between Chippewa street and Loughborough avenue before the tracks in this section, or by Ordinance seventeen thousand, one hundred and eighty-five, authorized to be built thereon, are constructed, then the said Southwestern Railway Company and said Southern Electric Railroad Company, their successors or assigns, respectively, are hereby authorized and empowered to make connections with said track or tracks as constructed, and operate their cars thereon respectively, for such distance as they are herein respectively authorized to construct their tracks, on said avenue, upon paying compensation, as in such case is provided by ordinance, or said Southwestern Railway Company and said Southern Electric Railroad Company, their successors and assigns, respectively, may, at their option, respectively, construct and operate twin tracks
96 along and contiguous to said track or tracks so before constructed as aforesaid.

Said companies, their successors and assigns, respectively, shall commence the construction of their tracks herein above authorized to be extended, within six months after the said streets and avenues are opened and graded, and shall complete the same within three years thereafter; but if said companies, their successors and assigns, respectively, shall desire to construct said tracks before said streets and avenues are opened and graded, they shall have respectively the privilege of grading said streets and avenues at their own expense, respectively, and constructing said tracks at any time. Said construction of said tracks shall be under the supervision and to the satisfaction of the Board of Public Improvements, and said railroad companies, their successors and assigns, respectively, shall, respectively, pave their tracks, the space between the tracks, and one foot outside of the tracks, so constructed, with the same, or better material, than that with which the remainder of the said streets and avenues along said railroad tracks shall be paved, under the supervision and to the satisfaction of the Board of Public Improvements, and said companies, their successors and assigns, respectively, shall, before beginning said construction of said tracks, file, respectively, their bond with the City Register, to be approved by the Mayor and Council, in the sum of ten thousand dollars, that they, respectively, will save the City of St. Louis harmless, on account of any and all damages sustained by any person by reason of the construction of said tracks, respectively.

SEC. 3. For the better effecting the purpose of this ordinance, the said Cass Avenue and Fair Grounds Railway Company, Citizens' Railway Company, Southwestern Railway Company, Southern Electric Railroad Company, St. Louis Railroad Company, Baden and St. Louis Railroad Company, and any company whose tracks may be intersected by the tracks of any of said companies, and
97 their successors and assigns, are hereby severally authorized to sell, convey or lease, if found desirable, their property, rights, privileges and franchises now owned and held or herein

granted, respectively, to any of the said companies named in this section, or to the St. Louis Transit Company, its successors and assigns, the said company and its successors and assigns so acquiring such property, rights, privileges and franchises, is hereby authorized to acquire, hold and enjoy the same during the term of this ordinance; provided, however, that if such acquisition is had, passengers shall be transported over the whole or any part of said railroads or railways, in the City of St. Louis, so acquired, on one continuous ride for one fare, and for that purpose transfers may be made at convenient points.

SEC. 4. Said railways or railroads, or any part thereof, may hereafter be operated by any motive power, except steam engines, in the streets, and for that purpose there may be all necessary wires, poles, and other suitable appliances erected and placed and maintained from time to time, on or in the streets, and also leading to the power houses where said motive power may be obtained, now or hereafter to be built, the same to be erected and placed under the direction and to the satisfaction of the Board of Public Improvements.

SEC. 5. In case any company named in this ordinance shall acquire the property, rights, privileges and franchises of any of said other companies, as provided in section three of this ordinance, said company so acquiring the same shall pay the sum now required by City Ordinance, to be paid by each of the respective companies, whose property, rights, privileges and franchises shall be so acquired. And said Cass Avenue and Fair Grounds Railway Company shall, during the period beginning January first, nineteen hundred and twenty-five, and ending January first, nineteen hundred and thirty-one, continue the payment of three and one-half per centum on its gross earnings from passenger receipts, as provided in section five of ordinance sixteen thousand, six hundred and thirty-nine, and from January first, nineteen hundred and thirty-one, until the termination of this ordinance, four per centum of its gross earnings from passenger receipts, and from the operation of all its cars; also, as provided in section five of ordinance sixteen thousand, six hundred and thirty-nine. And it is further provided that the failure on the part of any one or more of said companies to pay to the City of St. Louis, when the same is due, or within sixty days thereafter, any payment or payments now required by any ordinance, or by this ordinance, or by this ordinance to be paid by such company or companies respectively, shall cause the forfeiture of all the rights, privileges and franchises now possessed by, or by this ordinance granted to such company or companies, respectively, so in default.

98

SEC. 6. In case any company shall acquire the property, rights, privileges and franchises of another company or other companies, as provided in section three of this ordinance, the rate of speed that cars shall be propelled by it shall be the same as is now provided for the running of cars on the tracks so acquired.

SEC. 7. Said companies, or any of them, may, for the convenience of the public, operate ambulance, funeral, mail and express cars and carry express matter, provided, however, that no express

matter shall be received or delivered in the following territory, to-wit: East of Grand avenue and between Cass avenue on the north and Walnut street on the south.

SEC. 8. The rate of fare for a single continuous passage one way, within the City of St. Louis, shall be five cents for each person twelve years of age or upward, and two and one-half cents, or two tickets for five cents, for persons under twelve years of age and over three years.

SEC. 9. This ordinance shall be and remain in force until the expiration of the franchise of said Southern Electric Rail-
99 road Company, as provided for in section two of Ordinance Number fourteen thousand, eight hundred and thirty-seven, for the Southern Railway Company, its successors and assigns.

SEC. 10. This ordinance shall not become effective unless within ninety days after the approval thereof each of said companies shall file with the City Register its written acceptance of all the conditions of this ordinance, and its agreement that it will comply with all the terms and conditions of this ordinance, and all valid general ordinances now in force or that may hereafter be passed in reference to street railways.

Approved March 20, 1899."

(17,185.)

"An ordinance authorizing the Southwestern Railway Company to construct, maintain and operate a street railway with electricity, and to make running arrangements with other street railways.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Southwestern Railway Company, its successors or assigns, are hereby authorized and empowered to construct, maintain and operate a street railway, to be operated by electricity with overhead wires, on the following streets: Beginning at the center of the intersection of Chippewa street and Broadway; thence westwardly on Chippewa street with double tracks to Gravois avenue; thence southwardly on Gravois avenue to Morganford road, with power to make all necessary loops, switches and turnouts and to connect with the railway tracks now established on Seventh street and Broadway, and to transfer passengers to and from the cars of the St. Louis Railroad Company at Broadway and Chippewa street without extra compensation, and to cross any railway tracks in the line of its route, and to make such amicable running arrangements as they may be able to do with such railway companies whose tracks they may intersect or cross, and connect with and run thereon, and for that purpose, if necessary, to sell, lease, or otherwise convey
100 their property, privileges and franchises, and when so sold, leased or conveyed, the company acquiring the same shall have and enjoy all the rights and privileges herein granted.

SEC. 2. Said company shall have the power to erect and maintain all necessary poles and wires upon the streets for the purpose of

operating said railway and cars, and to convey its electric power from the point where the same may be obtained. Said poles to be located and erected to the satisfaction of the Board of Public Improvements, the wires on said poles to be not less than 20 feet above the surface of the streets.

SEC. 3. Said company shall pave the portions of the street between its tracks and between its rails, and for one foot outside of the same, with the same or better material as the adjacent portions of the street may be paved with from time to time.

Whenever any part of the streets through which said railway shall run shall be repaired or reconstructed, said railway company shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of said street is repaired or reconstructed.

Said railroad company, its successors or assigns, shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the street over which it constructs its railroad, and at all points where said railroad crosses any of the streets of the City of St. Louis, and the said railway company shall, at its own cost and expense, grade all streets upon which its tracks are laid, for the full width of said streets, from curb to curb, to the satisfaction of the Board of Public Improvements.

SEC. 4. A fare of five cents shall be charged for passengers of twelve years of age and over, and one-half of said fare for persons under twelve and over five years of age. Children's tickets
101 shall be sold by conductors on the cars at the rate of two tickets for five cents.

SEC. 5. In consideration of the rights, privileges and franchises granted and conferred by the provisions of this ordinance the Southwestern Railway Company, its successors and assigns, shall pay into the City Treasury of the City of St. Louis the sum of one thousand dollars per annum, on the first day of July, 1895, and a like sum on the first day of July of each year thereafter until and including the year 1905; and the sum of fifteen hundred dollars per annum on the first day of July of each year thereafter until and including the year 1920; and the sum of two thousand dollars per annum the first day of July of each year thereafter until and including the year 1928.

SEC. 6. Said Southwestern Railway Company shall, within 60 days after the approval of this ordinance, file with the City Register its written acceptance of all the provisions hereof, and shall file its bond with said Register with sufficient securities, to be approved by the Mayor and Council, in the penal sum of fifteen thousand dollars, that it will save said city harmless from any claim of damages done to persons or property arising from or out of the construction of said tracks, and that it will comply with all the requirements and conditions of this ordinance, and unless said acceptance and bond are filed as aforesaid, then all the privileges herein granted shall cease, and said ordinance shall become null and void.

It is expressly understood that by the acceptance of the provisions

of this ordinance by the Southwestern Railway Company, said company agrees to conform to all present and future charter provisions of the City of St. Louis and to all general ordinances now existing, or hereafter to be enacted, respecting and governing street railroads.

SEC. 7. Said road shall be commenced within six months after the approval of this ordinance, and completed to Grand avenue within eighteen months thereafter, and from that point to
102 the Morganford road within thirty months after its commencement as aforesaid.

SEC. 8. Said company shall operate its cars at a rate of speed not exceeding fifteen miles an hour, and shall run its cars over its railroad authorized by this ordinance every day in the year during the continuance of the franchise granted by this ordinance, between the hours of five-thirty o'clock a. m. and eight o'clock p. m. at intervals of not greater than ten minutes, and from eight o'clock p. m to midnight at intervals of not greater than fifteen minutes, and from midnight until five-thirty a. m. at intervals not greater than one hour.

SEC. 9. This ordinance shall remain in force for the period of thirty-five years from the date of its approval.

Approved April 1st, 1893."

That said ordinances were accepted by the Southwestern Railway Company for itself, successors and assigns; and that on the first day of April, 1901, the United Railways Company, by proper deed of conveyance, acquired all the property, rights, franchises and privileges of the said Southwestern Railway Company, so far as the latter was entitled to convey the same, and has leased the same to the St. Louis Transit Company for a term ending April 1st, 1939. That the said lines have been maintained and operated continuously, since they were constructed by the said Southwestern Railway Company, the United Railways Company and the St. Louis Transit Company, and the conditions in said ordinance imposed have been met.

(12) Amongst the lines of street railway owned by the United Railways Company and operated by the St. Louis Transit Company, are the lines of the St. Louis Railway, Cass Avenue & Fair
103 Grounds Railway; that the said Cass Avenue & Fair Grounds Railway was constructed under Ordinance 8701, which is as follows:

(8701.)

An ordinance authorizing the Cass Avenue and Fair Ground Railway Company to construct their road along certain streets in the City of St. Louis.

Be it ordained by the City Council of the City of St. Louis:

SECTION 1. James Edwards, J. Fruin, D. E. Lockwood, Thomas Bowe, Sal Lawrence, William Miller, Henry Klarges, Louis H. Struber, Wm. F. Wernse, John Cunningham and J. M. Fitzroy, and

their associates, under the name and style of the Cass Avenue and Fair Ground Railway Company, are hereby authorized to construct, maintain and operate their railway, to be worked by horse power only, from the corner of Fifth and Walnut streets up Walnut street to Eighth street, along Seventh and Eighth streets to Cass avenue, along Cass avenue to West Twentieth street, along West Twentieth street to Warren street, along Warren street to Jefferson avenue, along Jefferson avenue to St. Louis avenue, along St. Louis avenue to Prairie avenue, along Prairie avenue to Fair Ground, with double track, except on Seventh and Eighth streets: Providing, that if said railway company shall make contract with any existing railway company to reach Fifth street on or between Washington avenue and Market street, it shall relinquish the right herein granted to lay its track on Walnut street.

SEC. 2. The said railway shall be constructed with a double or single track, as herein specified, of iron rails, the center lines of which shall coincide as nearly as may be with the streets and avenues on which such track may be laid, unless permitted to be otherwise located at any point by the City Engineer.

SEC. 3. The tracks of said railway shall be laid on a grade
104 even with the grade of the streets through which it may pass, so that the free flow of water in the lateral and cross gutters shall not be thereby obstructed and the space between the track or rails shall be kept in good repair by said company, and with the same kind of material with which the balance of the street is improved, so as not to obstruct the passing, crossing or traveling of said streets and avenues by other vehicles. In case the said railway does not keep in good repair the roadway between the track, the same shall be done by the City Engineer and at the expense of said railway company.

SEC. 4. The gauge of track of said railway shall be the same as that of other roads laid in the City of St. Louis, and the railway with its appurtenances shall be maintained in good order and repair by said company, and shall be operated at all times for the use of the public.

SEC. 5. The stables, sheds and houses of said company shall in all respects conform to existing city ordinances, and said company shall hereafter pay such license as may be prescribed by ordinance, and be subject to taxes and assessments on all property belonging to them, in like manner as other corporations.

SEC. 6. Said Company shall be required to complete said road within two years from the approval of this ordinance.

SEC. 7. The City of St. Louis reserves the right to take up and remove the rails of said company whenever it shall be necessary for the repair or improvement of streets or avenues, or for the laying of water or gas pipes or sewers, or for other public purposes on the streets and avenues on which said rails may be laid, and such repairs or improvements shall be made by the city and without unnecessary delay, and the track shall be taken up and relaid by the company at their own proper cost and expense.

SEC. 8. A majority of the directors of said company shall
105 at all times be *bone fide* citizens of St. Louis, and, in default of this requirement, the privileges herein granted shall be forfeited.

SEC. 9. Said company shall file with the City Register, within ninety days from the date of the approval of this ordinance, their acceptance of its provisions, and in case of failure of said company to file their acceptance as above as required and within the time above specified, then and in that case this ordinance shall be null and void.

SEC. 10. Said company shall be required to make whole trips over said road and branches at intervals of not more than ten minutes between each trip, and the cars on said road and branches, shall run daily from six o'clock a. m. until six o'clock p. m., of each day over said railroad and branches at intervals of not more than ten minutes between the departure of each car during the above hours, and of intervals of not more than fifteen minutes from six o'clock p. m. until ten o'clock p. m., of each day. Any failure to comply with the provisions of this ordinance shall work a forfeiture of the rights herein granted; and the City Council hereby reserves to itself the right to regulate the time of such trips and the rate of speed.

SEC. 11. Permission is also hereby given to the Cass Avenue and Fair Ground Railway Company to construct a branch road, commencing with single track from West Twentieth street and Cass avenue, along Cass avenue to Glasgow avenue, and then with a double track along said avenue to Prairie avenue, then north on said avenue with double track to St. Louis avenue, where it joins the main road; also to construct a single track from Cass avenue south on Glasgow avenue to Gamble street, east on Gamble street to Jefferson avenue, across Jefferson avenue to Biddle street, east on Biddle to Eighteenth street, south on Eighteenth street to Wash street, and east on Wash street to Eighth street, where it will join with the track of the main line.

SEC. 12. This ordinance shall be and remain in force for thirty years from and after its approval.

Approved January 19, 1874.

106 That the same line was changed to electric power by Ordinance 13,872, said ordinance being as follows:

(13,872.)

An ordinance authorizing the Cass Avenue and Fair Ground Railway Company to alter its railroad and change its motive power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Cass Avenue and Fair Ground Railway Company, or its assignee or successor, may hereafter operate its line of railroad, or any part thereof, by cable laid underground or by electricity supplied by storage batteries carried on the cars, provided that it is found unobjectionable by the Board of Public Improvements of

the City of St. Louis, and may for such purposes make, from time to time, all needful and convenient changes in the construction of its railroad, including the construction and erection of all needful and convenient curves, trenches, excavations, sewer connections, cable and machinery in any of the streets in which its railroad is now constructed, provided that the said Cass Avenue and Fair Ground Railway Company shall pay all damages occasioned to property abutting on the street, at the place or places where it may locate its curves, switches and turnouts leading to the power or machinery house or houses used by said company in operating its lines or line of railroad; provided, that said company shall use its cars only for the carrying of passengers.

SEC. 2. If in any alteration or change in its said railroad, or in the adoption of such cable or electric power, any damage or injury shall result to any of the public or private sewers, or water pipes, or gas pipes, the said company shall pay the same. And any necessary changes in the location of the water pipe or gas pipe or sewers, laid or built in the streets used by said railway company, shall be made by said company at its own cost and expense, and all such
107 work shall be done under the supervision and to the satisfaction of the Board of Public Improvements; provided, however, that all the rights, privileges and franchises granted by this ordinance shall cease and expire on January 19, 1904.

SEC. 3. At least thirty days before beginning any alteration or reconstruction of its railroad made necessary by the adoption of such cable or electric power, said company shall file with the City Register its acceptance of all the provisions of this ordinance, and shall at same time file with the Board of Public Improvements full plans and specifications of such proposed alteration or reconstruction, full description of such electric motor and the cars intended to be used therewith, which such plans and specifications and description shall be approved by said board, and until such approval no such change shall be made in its motive power, and shall also execute its bond to the City of St. Louis, in the penal sum of fifty thousand dollars, with two securities, to be approved by the Mayor and City Council, conditioned that it shall save the city harmless on account of all damages that may be sustained by the city, or any person or persons during the alteration of its railroad. The portions of the streets disturbed by such alteration or reconstruction of its railroad shall be restored by said company, under the supervision and to the satisfaction of said Board of Public Improvements and at the cost and expense of said railway company.

SEC. 4. Said company shall have the right at its own cost and expense to make all such connections as may be needful or necessary between its said railroad and any power houses it may establish along the line thereof, and also all proper and necessary connections between the sewers of the city and any conduit built by said company in the streets in which its railroad may be operated. The said connections shall be made under the supervision of and to the satisfaction of the Board of Public Improvements.

SEC. 5. The said company shall have the right to cross w
108 its tracks, conduit and cable, the railroad or railroads of s
other company or companies which has or have heretof
been, or may be hereafter built, and do whatever may be need
to render such crossing feasible and least inconvenient to the resp
ive companies, and to the use of such street or streets by the pub
which work shall be done under the supervision of and to the sa
faction of the Board of Public Improvements, at the cost and
pense of the said Cass Avenue and Fair Ground Railway Compa
If said Cass Avenue and Fair Ground Railway Company accept
provisions of this ordinance, and its track or tracks cross the track
tracks of any other company or companies, the expense of so cha
ing and arranging the cables and other appliances at such crossi
for the successful operation of the cables and cars of both railro
shall be borne by said Cass Avenue and Fair Ground Railway Co
pany, and for that purpose the best known methods and applian
shall be used, satisfactory to the said company whose railroad tra
were first laid at such crossing. And if the said companies can
agree as to the best methods and appliances to be used, then the wh
of said matter in controversy shall be submitted by either or b
of said companies to the Board of Public Improvements of this ci
who shall forthwith decide how and in what manner and by wh
appliances said change and arrangement shall be made, and th
the same shall be made in accordance with said decision by s
Cass Avenue and Fair Ground Railway Company at its own c
and expense, and in such manner as not to delay more than is ab
lutely necessary, the operation of the cars of the said company wh
railroad tracks were first laid. And thereafter the Cass Avenue a
Fair Ground Railway Company shall so operate its cars and cab
and said appliances as not to interfere with or delay the operati
of the cars and cables of any other company. And in case at a
time anything shall happen to the cable or its appliances of the C
Avenue and Fair Ground Railway Company that will int
109 fere with the operation of any cable or cars of other co
panies, the same shall be remedied at once by the Cass Aven
and Fair Ground Railway Company, and for that purpose the C
Avenue and Fair Ground Railway Company shall at all times ke
duplicates of its said appliances on hand.

SEC. 6. The City of St. Louis reserves the right to regulate t
running of cars and the rate of speed at which cars shall be run
said railroad.

SEC. 7. Within ten months after this ordinance shall be approv
the Cass Avenue and Fair Ground Railway Company shall file
written acceptance in the office of the City Register of all the p
visions of this ordinance, and that it will within twelve months fr
the date of the approval of this ordinance in good faith begin t
work herein provided to be done, and that it will complete the wo
within two years from the date said work shall be commenced. A
unless the said Cass Avenue and Fair Ground Railway Compa
shall file its written acceptance of all the provisions of this ordinan
and shall commence and complete the work as herein provided, t

rights and privileges herein granted by the provisions of this ordinance shall cease and become void, and said bond herein provided to be given by the Cass Avenue and Fair Ground Railway Company shall be declared forfeited, and the amount thereof shall be forfeited to the City of St. Louis.

SEC. 8. Any failure or neglect to faithfully perform and comply with all and every of the conditions and provisions of this ordinance shall cause a forfeiture of all the rights and privileges hereby granted.

Approved February 8, 1887.

And that by Ordinances 9139, 13,872, 19,738 and 16,639, said railway extended its lines over other streets, said ordinances being as follows:

(9,139.)

An ordinance authorizing the Cass Avenue and Fair Grounds
110 Railway Company to relocate a portion of its road.

Be it ordained by the City Council of the City of St. Louis:

SECTION 1. That the Cass Avenue and Fair Grounds Railway Company is hereby authorized to construct, maintain and operate its railway on and along Jefferson avenue and Glasgow avenue, from Cass avenue to St. Louis avenue, instead of West Twentieth street and Warren street, as provided in section one of ordinance eighty-seven hundred and one, and may lay and use a double track on Cass avenue, between West Twentieth street and Glasgow avenue: Provided, that in case the right to construct a street railroad along Jefferson avenue is hereafter granted to any other company, said Cass Avenue and Fair Grounds Railway Company shall permit said company to run its cars over such portion of the Cass Avenue and Fair Grounds Railway Company as are laid upon Jefferson avenue, upon the payment of half the cost of laying such track, and half the cost of keeping the same in repair.

SEC. 2. The Cass Avenue and Fair Grounds Railway Company shall file, in the City Register's office, within ten days from the approval of this ordinance, a written acceptance of its provisions; and in case said company shall fail to file its acceptance, as in this section provided, then and in that case this ordinance shall be null and void.

Approved July 10, 1874.

(13,872.)

An ordinance authorizing the Cass Avenue and Fair Ground Railway Company to alter its railroad and change its motive power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Cass Avenue and Fair Ground Railway
111 Company, or its assignee or successor, may hereafter operate its line of railroad, or any part thereof, by cable laid under-

ground or by electricity supplied by storage batteries carried on cars, provided that it is found unobjectionable by the Board Public Improvements of the City of St. Louis, and may for s purpose make, from time to time, all needful and conven changes in the construction of its railroad, including the const tion and erection of all needful and convenient curves, trenches cavations, sewer connections, cable and machinery in any of streets in which its railroad is now constructed, provided that said Cass Avenue and Fair Ground Railway Company shall pay damages occasioned to property abutting on the street, at the p or places where it may locate its curves, switches and turnouts l ing to the power or machinery house or houses used by said c pany in operating its lines or line of railroad; provided, that company shall use its cars only for the carrying of passengers.

SEC. 2. If in any alteration or change in its said railroad, or in adoption of such cable or electric power, any damage or injury s result to any of the public or private sewers, or water pipes, or pipes, the said company shall pay the same. And any neces changes in the location of the water pipe or gas pipe or sewers, or built in the streets used by said railway company, shall be m by said company, at its own cost and expense, and all such work s be done under the supervision and to the satisfaction of the Boar Public Improvements; provided, however, that all the rights, p leges and franchises granted by this ordinance shall cease and ex on January 19, 1904.

SEC. 3. At least thirty days before beginning any alteration o construction of its railroad made necessary by the adoption of s cable or electric power, said company shall file with the City Reg its acceptance of all the provisions of this ordinance, and sha same time file with the Board of Public Improvements
112 plans and specifications of such proposed alteration or re struction, a full description of such electric motor and the intended to be used therewith, which such plans and specifica and description shall be approved by said board and until such proval no change shall be made of its motive power, and shall execute its bond to the City of St. Louis, in the penal sum of thousand dollars, with two securities, to be approved by the M and City Council, conditioned that it shall save the city harmle account of all damages that may be sustained by the city, or any son or persons during the alteration of its railroad. The portio the streets disturbed by such alteration or reconstruction of its road shall be restored by said company, under the supervision a the satisfaction of said Board of Public Improvements and a cost and expense of said railway company.

SEC. 4. Said company shall have the right at its own cost an pense to make all such connections as may be needful or nece between its said railroad and any power houses it may establish a the line thereof, and also all proper and necessary connection tween the sewers of the city and any conduit built by said com in the streets in which its railroad may be operated. The said

nections shall be made under the supervision of and to the satisfaction of the Board of Public Improvements.

SEC. 5. The said company shall have the right to cross with its tracks, conduit and cable, the railroad or railroads of any other company or companies which has or have heretofore been, or may be hereafter built, and do whatever may be needful to render such crossing feasible and least inconvenient to the respective companies, and to the use of such street or streets by the public, which work shall be done under the supervision of and to the satisfaction of the Board of Public Improvements, at the cost and expense of the said Cass Avenue and Fair Ground Railway Company. If said Cass Avenue and Fair Ground Railway Company accept the provisions of this
113 ordinance, and its track or tracks cross the track or tracks of any other company or companies, the expense of so changing and arranging the cables and other appliances at such crossings for the successful operation of the cables and cars of both railroads shall be borne by said Cass Avenue and Fair Ground Railway Company, and for that purpose the best known methods and appliances shall be used, satisfactory to the said company whose railroad tracks were first laid at such crossing. And if the said companies can not agree as to the best methods and appliances to be used, then the whole of said matter in controversy shall be submitted by either or both of said companies to the Board of Public Improvements of this city, who shall forthwith decide how and in what manner and by what appliances said change and arrangement shall be made, and then the same shall be made in accordance with said decision by said Cass Avenue and Fair Ground Railway Company at its own cost and expense, and in such manner as not to delay more than is absolutely necessary, the operation of the cars of the said company whose railroad tracks were first laid. And thereafter the Cass Avenue and Fair Ground Railway Company shall so operate its cars and cables and said appliances as not to interfere with or delay the operation of the cars and cables of any other company. And in case at any time anything shall happen to the cable or its appliances of the Cass Avenue and Fair Ground Railway Company that will interfere with the operation of any cable or cars of other companies, the same shall be remedied at once by the Cass Avenue and Fair Ground Railway Company, and for that purpose the Cass Avenue and Fair Ground Railway Company shall at all times keep duplicates of its said appliances on hand.

SEC. 6. The City of St. Louis reserves the right to regulate the running of cars and the rate of speed at which cars shall be run on said railroad.

SEC. 7. Within ten months after this ordinance shall be approved, the Cass Avenue and Fair Ground Railway Company shall
114 file its written acceptance in the office of the City Register of all the provisions of this ordinance, and that it will within twelve months from the date of the approval of this ordinance in good faith begin the work herein provided to be done, and that it will complete *and* work within two years from the date said work shall be commenced. And unless the said Cass Avenue and Fair Ground

Railway Company shall file its written acceptance of all the provisions of this ordinance, and shall commence and complete the work as herein provided, the rights and privileges herein granted by the provisions of this ordinance shall cease and become void, and said bond herein provided to be given by the Cass Avenue and Fair Ground Railway Company shall be declared forfeited, and the amount thereof shall be forfeited to the City of St. Louis.

SEC. 8. Any failure or neglect to faithfully perform and comply with all and every of the conditions and provisions of this ordinance shall cause a forfeiture of all the rights and privileges hereby granted.

Approved February 8, 1887.

(19,738.)

An ordinance for the greater convenience and further transportation of passengers on the railways of the Cass Avenue and Fair Grounds Railway Company, Citizens' Railway Company, Southwestern Railway Company, Southern Electric Railroad Company, St. Louis Railroad Company and Baden and St. Louis Railroad Company, respectively, and for that purpose authorizing change of motive power, the connection of railway tracks respectively, and the running of cars of one or more of said companies on the tracks of one or more of the other companies, and of such companies whose tracks may be intersected by the tracks of either of said companies, with authority to run ambulance, funeral, mail and express cars, and also authorizing if found desirable for said purpose, the sale, conveyance or lease of the rights, privileges, franchises and property of one or more of said companies, and of the companies whose tracks may be so intersected, to another of said companies or to the St. Louis Transit Company, its successors and assigns, and the acquisition thereof, with authority to hold, enjoy and operate the same for a period expiring with the term of the franchise of the said Southern Electric Railroad Company, as provided in City Ordinance number fourteen thousand, eight hundred and thirty-seven, and to regulate the speed of cars, and authorizing the Southwestern Railway Company to extend its tracks on Gravois avenue from its intersection with the Morganford road to Bates street, and there to connect with the tracks of the Southern Electric Railroad Company, and extending the time for the completion of its tracks from Grand avenue, on Chippewa street and Gravois avenue to the Morganford road, and the Southern Electric Railroad Company to extend its route on Loughborough avenue, Gravois avenue and Bates street, and to operate the same.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Whereas, it will be to the great advantage of passengers to have the tracks of the Cass Avenue and Fair Grounds Railway Company, Citizens' Railway Company, Southwestern Railway Company, Southern Electric Railroad Company, St. Louis Railroad

Company and Baden and St. Louis Railroad Company, respectively, connected, and the cars of said companies respectively, run on the track or tracks of others of said companies:

Therefore, the St. Louis Railroad Company is hereby authorized to connect its tracks on Broadway with the tracks of the Citizens' Railway Company at Morgan street and Franklin avenue, and to connect its tracks on Broadway and Walnut street with the tracks of the Cass Avenue and Fair Grounds Railway Company, and its tracks at Broadway and Elm street with the tracks at that point, and to connect its tracks at or near Broadway and Keokuk street with the tracks of the Southern Electric Railroad Company; and authority is
116 given to the Southwestern Railway Company to connect its tracks with the Southern Electric Railroad Company at Chippewa street and Jefferson avenue; and thereupon with the consent of the St. Louis Railroad Company and said Citizens' Railway Company, Cass Avenue and Fair Grounds Railway Company, Baden and St. Louis Railroad Company, Southern Electric Railroad Company and the Southwestern Railway Company, respectively, the cars of said companies respectively, may be run on each other of said companies' tracks respectively, and upon the tracks of any railway company with which any of the tracks of said companies may intersect, as may be agreed upon between them respectively, and with such companies whose tracks may be so intersected, and for that purpose, authority is hereby given to make desirable curves and switches and connections therewith, and the cars shall be run at the same rate of speed on the tracks on which they may run as is now provided by ordinance for the running of cars thereon.

SEC 2. The Southwestern Railway Company, its successors and assigns, is hereby authorized to extend its tracks on Gravois avenue from its intersection with the Morganford road to Bates street and there to connect with the tracks of the Southern Electric Railroad Company, and the time for extending the tracks of the Southwestern Railway Company, from Chippewa street and Grand avenue on Chippewa street and Gravois avenue to the Morganford road, as provided for in Ordinance seventeen thousand, one hundred and eighty-five, is hereby extended for the period of two years from the approval of this ordinance, and the Southern Electric Railroad Company, its successors and assigns are authorized to extend its railway and operate its cars beginning with connections with its present double track on Broadway and its intersection with Bates street; thence with double tracks on Bates street to Gravois avenue; thence south on Gravois avenue to Loughborough avenue; thence east on
117 Loughborough avenue with single or double track with necessary cross-overs and turn-outs to connections with its tracks at present on Broadway, with power to erect poles and string wires in the same manner as is now authorized on other parts of its road, and to cross the tracks of any other railway company on its said route, and the cars thereon shall be operated at a speed not exceeding fifteen miles an hour.

In case street railway track or tracks shall be constructed on Gravois avenue between Chippewa street and Loughborough avenue,

before the tracks in this section, or by Ordinance seventeen thou sand, one hundred and eighty-five, authorized to be built thereon are constructed, then the said Southwestern Railway Company and said Southern Electric Railroad Company, their successors or assigns respectively, are hereby authorized and empowered to make connections with said track or tracks as constructed, and operate their cars thereon respectively, for such distance as they are herein respectively authorized to construct their tracks, on said avenue, upon paying compensation as in such case is provided by ordinance or said Southwestern Railway Company and said Southern Electric Railroad Company, their successors and assigns, respectively, may, at their option respectively construct and operate twin tracks along and contiguous to said track or tracks so before constructed as aforesaid.

Said companies, their successors and assigns, respectively, shall commence the construction of their tracks herein above authorized to be extended, within six months after the said streets and avenues are opened and graded, and shall complete the same within three years thereafter; but if said companies, their successors and assigns respectively, shall desire to construct said tracks before said streets and avenues are opened and graded, they shall have respectively the privilege of grading said streets and avenues at their own expense respectively, and constructing said tracks at any time. Said construction of said tracks shall be under the supervision and to
118 the satisfaction of the Board of Public Improvements, and said railroad companies, their successors and assigns, respectively, shall, respectively, pave their tracks, the space between the tracks, and one foot outside of the tracks, so constructed, with the same, or better material, than that with which the remainder of the said streets and avenues along said railroad tracks shall be paved under the supervision and to the satisfaction of the Board of Public Improvements, and said companies, their successors and assigns respectively, shall, before beginning said construction of said tracks file, respectively, their bond with the City Register, to be approved by the Mayor and Council, in the sum of ten thousand dollars, that they, respectively, will save the City of St. Louis harmless, on account of any and all damages sustained by any person by reason of the construction of said tracks, respectively.

SEC. 3. For the better effecting the purpose of this ordinance, the said Cass Avenue and Fair Grounds Railway Company, Citizens Railway Company, Southwestern Railway Company, Southern Electric Railroad Company, St. Louis Railroad Company, Baden and St Louis Railroad Company, and any company whose tracks may be intersected by the tracks of any of said companies, and their successors and assigns, are hereby severally authorized to sell, convey or lease, if found desirable, their property, rights, privileges and franchises now owned and held or herein granted, respectively, to any of the said companies named in this section, or to the St. Louis Transit Company, its successors and assigns, the said company and its successors and assigns so acquiring such property, rights, privileges and franchises, is hereby authorized to acquire, hold and enjoy the same during the term of this ordinance; provided, however that if such

acquisition is had, passengers shall be transported over the whole or any part of said railroads or railways, in the City of St. Louis,
119 so acquired, on one continuous ride, for one fare, and for that purpose transfers may be made at convenient points.

SEC. 4. Said railways or railroads, or any part thereof, may hereafter be operated by any motive power, except steam engines, in the streets, and for that purpose there may be all necessary wires, poles and other suitable appliances erected and placed and maintained from time to time, on or in the streets, and also leading to the power houses where said motive power may be obtained, now or hereafter to be built, the same to be erected and placed under the direction and to the satisfaction of the Board of Public Improvements.

SEC. 5. In case any company named in this ordinance shall acquire the property, rights, privileges and franchises of any of said other companies, as provided in section three of this ordinance, said company so acquiring the same shall pay the sum now required by City Ordinance, to be paid by each of the respective companies, whose property, rights, privileges and franchises shall be so acquired. And said Cass Avenue and Fair Grounds Railway Company shall, during the period beginning January first, nineteen hundred and twenty-five, and ending January first, nineteen hundred and thirty-one, continue the payment of three and one-half percentum on its gross earnings from passenger receipts, as provided in section five of ordinance sixteen thousand, six hundred and thirty-nine, and from January first, nineteen hundred and twenty-one, until the termination of this ordinance, four per centum of its gross earnings from passenger receipts, and from the operation of all its cars; also, as provided in section five of ordinance sixteen thousand, six hundred and thirty-nine. And it is further provided that the failure on the part of any one or more of said companies to pay to the City of St. Louis, when the same is due, or within sixty days thereafter, any payment or payments now required by any ordinance, or by this ordinance, or by this ordinance to be paid by such com-
120 pany or companies respectively, shall cause the forfeiture of all the rights, privileges and franchises now possessed by, or by this ordinance granted to such company or companies, respectively, so in default.

SEC. 6. In case any company shall acquire the property, rights, privileges and franchises of another company or other companies, as provided in section three of this ordinance, the rate of speed that cars shall be propelled by it shall be the same as is now provided for the running of cars on the tracks so acquired.

SEC. 7. Said companies, or any of them, may, for the convenience of the public, operate ambulance, funeral, mail and express cars and carry express matter, provided, however, that no express matter shall be received or delivered in the following territory, to-wit: East of Grand avenue and between Cass avenue on the north and Walnut street on the south.

SEC. 8. The rate of fare for a single continuous passage one way, within the City of St. Louis, shall be five cents for each person twelve years of age or upward, and two and one-half cents, or two

tickets for five cents, for persons under twelve years of age and over three years.

SEC. 9. This ordinance shall be and remain in force until the expiration of the franchise of said Southern Electric Railroad Company, as provided for in section two of Ordinance number fourteen thousand, eight hundred and thirty-seven, for the Southern Railway Company, its successors and assigns.

SEC. 10. This ordinance shall not become effective unless within ninety days after the approval thereof each of said companies shall file with the City Register its written acceptance of all the conditions of this ordinance, and its agreement that it will comply with
121 all the terms and conditions of this ordinance, and all valid general ordinances now in force or that may hereafter be passed in reference to street railways.

Approved March 20, 1899.

(16,639.)

An ordinance to authorize the Cass Avenue and Fair Grounds Railway Company to extend its railway and operate its extensions by electricity, to regulate its rate of speed, to grant to the Cass Avenue and Fair Grounds Railway Company, the Northern Central Railway Company, the Union Railroad Company, an extension of their respective rights, privileges and franchises; and to authorize the Cass Avenue and Fair Grounds Railway Company to acquire the property, rights, privileges and franchises of said other two companies, and use the same, and requiring the Cass Avenue and Fair Grounds Railway Company to make payments to the City of St. Louis in lieu of the payments now required of the Northern Central Railway Company.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The rights, privileges and franchises hereby or heretofore by former ordinances granted to the Cass Avenue and Fair Grounds Railway Company, the Northern Central Railway Company, and the Union Railroad Company, respectively, are hereby confirmed to said companies respectively, and extended, and shall be enjoyed by them respectively and their respective successors and assigns, up to and until January 1st, 1925; and the City of St. Louis consents to a sale, transfer and assignment or lease, and authority is hereby granted therefor, of the property, rights, privileges and franchises of the said Northern Central Railway Company and said Union Railroad Company, respectively, to the said Cass Avenue and Fair Grounds Railway Company, and thereupon said Cass
122 Avenue and Fair Grounds Railway Company shall possess, use and enjoy the same.

SEC. 2. The Cass Avenue and Fair Grounds Railway Company, as consolidated under Section one hereof, its successors and assigns, is hereby authorized to extend and construct its tracks from Prairie avenue westwardly on St. Louis avenue with a double track from

Prairie avenue westwardly on St. Louis avenue to the dividing line between city blocks 4,479 and 4,484, thence northwardly on or along said dividing line to the east and west alley in said city block 4,484, thence on and along said alley westwardly to lot 51 of Green and Berry's third subdivision city block 4,484, thence over and through said lot 51 to Euclid avenue, thence over and across Euclid avenue and westwardly on St. Louis avenue to Goodfellow avenue, together and westwardly on St. Louis avenue to Goodfellow avenue, together with the necessary switches, turn-outs, sidings, etc., also the necessary poles and wires connecting its power house with its lines of railway, and authorized to use electricity as a motive power on said extensions and to run its cars on said extensions at a rate of speed not to exceed fifteen miles an hour west of Prairie avenue. The general plan, character and location of the tracks, poles, overhead wires and guard wires shall be submitted to and be approved by the Board of Public Improvements.

SEC. 3. The conditions under which the said railway company shall use electricity for the extension herein authorized shall be the same as specified in ordinance No. 15,803, and this ordinance shall not take effect unless within ten days before the change of motive power is commenced, the said railway company shall pay to Allen & Vieths, contractors, for the granite pavement on Cass avenue, chargeable against the Union Railroad Company, the sum of $146 and seventy cents, and shall also pay to said Allen & Vieths, contractors, for the granite pavement on Cass avenue, chargeable against the Cass Avenue and Fair Grounds Railway Company, the
123 sum of $7,075 and 49 cents, and shall file in the City Register's office, within said time, the written certificate of the City Counselor that said amounts of $146 and seventy cents and $7,075 and forty-nine cents, respectively, have been paid and satisfied, and also the written release of said contractors to the Union Railroad Company and the Cass Avenue and Fair Grounds Railway Company, and the City of St. Louis for said amounts.

SEC. 4. The rate of fare shall be five cents for adults and two and one-half cents for children under twelve years of age.

SEC. 5. The said company as consolidated shall file with the Comptroller on the first day of July and the first day of January in each year, beginning January 1st, 1893, a full and complete statement of the gross earnings of said railway company for the preceding six months, subscribed and sworn to by its President and Secretary, and shall pay to the Treasurer of the City of St. Louis, within ten days after the filing of each and every such semi-annual statement, one and one-half per cent. of the gross amount of said earnings for each six months, down to and including the six months terminating January 1, 1895; the sum of two per cent. on the amount of its gross earnings for each six months from January 1, 1895, to January 1, 1900; the sum of two and one-half per cent. on the amount of its gross earnings for each six months from January 1, 1900, to January 1, 1910; and the sum of three per cent. on the amount of its gross earnings for each six months from January 1, 1910, to January 1, 1920; and the sum of three and one-half per centum on the amount of its gross earnings for each six months from

January 1, 1920, to January 1, 1925, which payments shall be in addition to all other taxes or license fees now or hereafter prescribed by law; and the failure on the part of said company, or its successors or assigns, to file said semi-annual statement or pay the aforesaid tax on its gross receipts within thirty days after the state-
124 ment should be filed, or after the tax becomes due and payable, shall work a forfeiture of the franchise granted by this ordinance, and the amount of said tax shall also constitute a legal demand against said company. The Mayor, Comptroller, Register and Treasurer of the City of St. Louis shall have the right at any time to examine the books and papers of the company for the purpose of ascertaining its gross earnings. Any violations of the provisions of this section will work a forfeiture of all rights granted under this ordinance.

SEC. 6. The Northern Central Railway Company is hereby released from the payment to the city required of it to be made on January 1, 1893, and thereafter by section 4 of ordinance No. 12,713.

SEC. 7. The said Cass Avenue and Fair Grounds Railway Company shall, at its own expense, under the supervision of the Street Commissioner, grade St. Louis avenue from Prairie to Marcus avenue, to its full width between the building lines, the grades to conform to the grade as declared by the Street Department and as the same now appears upon the profile maps in the office of the Street Commissioner. Said grading shall be commenced within 90 days after the acceptance of this ordinance, and shall be completed within six months thereafter.

SEC. 8. The construction of said railroad on St. Louis avenue, between Prairie avenue and Marcus avenue, shall be begun within thirty days after said St. Louis avenue is graded between those points, and shall be in operation by electricity within eighteen months thereafter.

SEC. 9. Construction of said road on St. Louis avenue and its right of way between Marcus avenue and Kings Highway, shall be begun immediately after the completion of said road to Marcus avenue, and within 90 days after a right of way 30 feet wide through city blocks 4,484, as designated in section 2 of this ordinance, shall be granted to said company by the property owners of said
125 block, and shall be operated by electricity within six months thereafter, and the construction of said railroad on St. Louis avenue, between Kings Highway and Union avenue, and Union avenue and Goodfellow avenue, shall be begun within 90 days respectively after said St. Louis avenue is opened and graded between these respective streets, and shall be in operation, by electricity, between each of these respective streets, within six months after St. Louis avenue is opened and graded between each of said respective streets.

SEC. 10. Whenever any of the streets or avenues through which said Cass Avenue and Fair Grounds Railway Company, as consolidated and extended, runs, are repaired or reconstructed, said company shall, upon being notified by the Street Commissioner so to

do, cause the space between the rails and tracks and twelve inches outside thereof to be repaired and reconstructed with the same material or better with which the balance of said street or avenue is repaired or reconstructed.

SEC. 11. The Cass Avenue and Fair Grounds Railway Company, by the acceptance of this ordinance, releases all rights it may have within the third parallel street of said St. Louis avenue under section 3 of an act concerning street railroads in the City of St. Louis, approved January 16, 1860. And unless the construction and operation of said railway on St. Louis avenue is had within the periods in this ordinance provided, this ordinance shall be held null and void.

SEC. 12. The Cass Avenue and Fair Grounds Railway Company, as consolidated, shall begin its change of motive power within 90 days after the approval of this ordinance, and complete the same within two years thereafter, except as herein otherwise provided.

SEC. 13. Said Cass Avenue and Fair Grounds Railway Company shall, within 60 days after the approval of this ordinance, file with the City Register its written acceptance of all the provisions
126 hereof, and shall file its bond with said Register, with two sufficient securities, to be approved by the Mayor and Council, in the penal sum of fifteen thousand dollars, that it will save said city harmless from any claim of damages done to persons or property arising from or out of the construction of said tracks, and that it will comply with all the requirements and conditions of this ordinance, and unless said acceptance and bond are filed as aforesaid, then all the privileges herein granted shall cease, and said ordinance shall become null and void.

SEC. 14. It is expressly understood that by the acceptance of the provisions of this ordinance, by the Cass Avenue and Fair Grounds Railway Company, said company agrees to conform to all present and future charter provisions of the City of St. Louis and to all general ordinances now existing, or hereafter to be enacted, respecting and governing street railroads.

Approved, April 11th, 1892.

And that the United Railways Company on September 19, 1899, purchased all the lines of railway of the said Cass Avenue and Fair Grounds Railway Company and all of its rights, franchises and privileges, so far as the same could be conveyed to it, and holds title thereto by proper conveyance, and that the St. Louis Transit Company at the institution of this suit was the lessee of said lines and held the same as such lessee by lease duly executed September 30, 1899, and is now engaged in maintaining and operating the same.

(13) Amongst the lines of street railways in said city owned by the United Railways Company and operated by the St. Louis Transit Company are the lines formerly known as the Southern Railway, whose construction was begun under Ordinance 9,025, ap-
127 proved July 2, 1874, by the Carondelet Railway Company upon the Carondelet Road and other streets in said City of St. Louis, which ordinance is as follows:

(9,025.)

An ordinance authorizing the Carondelet Railway Company to construct their road along certain streets in the City of St. Louis.

Be it ordained by the City Council of the City of St. Louis:

SECTION 1. That John G. Kelly, Fred L. Garesche, M. J. Brennan, Michael Hammel, O. M. Dean, Peter Murray, Bart. Guion, A. McHose, William L. Ewing, Jr., R. R. Southward, J. R. McDonough, and their associates under the name and style of the Carondelet Railway Company, be and they are hereby authorized and empowered to construct, maintain and operate their railroad, to be worked by horse power only, upon the following streets and avenues in the City of St. Louis, commencing at the intersection of Chippewa street with the Carondelet road; thence south on Carondelet road to Meramec street; thence west on Meramec street to Stringtown road; thence south on Stringtown road to Dover street; thence east on Dover street to Fourth street; thence south on Fourth street to the intersection of Stein street and the county road; thence south on the county road to Franklin street; thence east on Franklin street to Third street; thence south on Third street to Davis street; thence east of Davis street to Main street; thence north on Main street to Ellwood street; thence west on Ellwood street to Fourth street, all the above route being within the present limits of the First Ward.

SEC. 2. The said company shall have the privilege of laying their track on the Carondelet road from Ellwood street to Chippewa street, so soon after the completion of the grading and macadamizing of said road as is practicable.

128 SEC. 3. Said company shall be required to complete their roads as provided for in sections one and two within one year from the time the streets and avenues named therein shall have been graded and macadamized by the city.

SEC. 4. The tracks of said railway shall be laid on a grade even with the grade of the streets and avenues along which the same may be laid, and the space between the tracks where a double track shall be used, as also between the rails, and of at least two feet outside of the rails shall be paved or macadamized and kept in good order and repair by said company, with such materials as now are or may be used by the City of St. Louis for paving or macadamizing the other parts of said streets and avenues along which said track shall be laid. All such paving or macadamizing shall be of as good quality as that done by the city along said streets and avenues, and shall be done in such sections as may be required by the City of St. Louis, and said track shall be so constructed as not to obstruct the free flow of water in the lateral and cross gutters, and also as not to obstruct the passing along, traveling upon or crossing said streets and avenues by other vehicles.

SEC. 5. The gauge of said railway shall not exceed five feet six inches in width, so that other vehicles of ordinary width can run on

said tracks, and the said railway and its appurtenances shall be maintained in good order and repair by said company, and shall be operated at all seasonable times for the conveyance of the public, and each passenger may be required to pay a fare not exceeding the sum of five cents for being transported from any one point to another point on said line. The stables, sheds and other buildings of said company shall in all respects conform to existing city ordinances, and said company shall hereafter pay such license as may be prescribed by ordinance, and shall be subject to taxation and assessment for all property belonging to them, in like manner as other corporations, and not otherwise.

129 SEC. 6. The City of St. Louis reserves the right to take up and remove the rails of said company whenever necessary for the improvement or repair of said streets or avenues, laying water or gas pipes, or for the construction of sewers, or for other public purposes, on, along or across said streets or avenues, or any of them; but all such improvements and repairs shall be made with the least possible injury and delay to said company, and said tracks shall be taken up and relaid at the cost and expense of the said company.

SEC. 7. A majority of the Directors of said company shall at all times be *bona fide* citizens of St. Louis City or County, and in default of this requirement, the privileges herein granted shall be subject to forfeiture to the City of St. Louis.

SEC. 8. Said company shall make an exhibit of the condition thereof on the first Monday of January of each and every year during the existence of this ordinance subsequent to the completion of said railroad, setting forth an account of all the receipts and expenditures of the preceding year, all indebtedness of said company, and to whom owing, as also all money due or owing to said company, which exhibit shall be published in some newspaper printed in the City of St. Louis.

SEC. 9. The City of St. Louis reserves the right to construct railways upon such streets or avenues as may cross any of the streets or avenues upon which said company are authorized to construct their said railroad.

SEC. 10. The said company shall in all cases be legally liable for al injuries or damages resulting to any person or the property of any person, through the carelessness or negligence of any person having control of said railway, or employed by said company in the management thereof in any capacity. And provided further, should said company hereafter obtain any special charter or amendments from the Legislature of this State exempting them

130 from any of the requirements of this ordinance the said company shall first obtain the assent of the Common Council to such special charter or amendments before accepting the same, or otherwise the rights of said company under this ordinance shall be subject to forfeiture by the City of St. Louis.

SEC. 11. Said railroad company shall be required to make whole tips along the line as herein established, as soon as the whole of

said line shall be completed, and shall conform to all general rules and regulations that may hereafter be adopted by the Council for the management of horse railroads.

SEC. 12. The said company shall be required to keep for sale at the office, passenger tickets for children ten years old and under, in packages thirty-five for one dollar.

SEC. 13. The said company shall file with the City Register, within thirty days after the approval of this ordinance, their acceptance thereof, and said company shall at the same time file with the Register a bond in the sum of Twenty Thousand Dollars, with two good and sufficient securities, to be approved by the Mayor, conditioned that said company shall build its road over the route herein specified, and stock the same with cars, etc., within twelve months from the approval of this ordinance.

SEC. 14. The Carondelet Railroad shall have the right of connecting with and running their cars over the routes and lines of any street railroad in the City of St. Louis, with whom arrangements satisfactory to both parties can be made.

SEC. 15. This ordinance shall be and remain in force for twenty-five years from and after the approval thereof.

SEC. 16. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SEC. 17. Should the City of St. Louis hereafter grant to any street railroad company the right of way on any street named
131 in this ordinance, such street railroad company shall have the right to run its cars over such parts of the track of the Carondelet Railroad Company as may lay on such street upon payment of one-half the cost of laying such track and one-half the annual expense of keeping said track in repair, but nothing in this section shall be construed to give any company the right to run over the whole length of said Carondelet Railway Company's road.

Approved July 2, 1874.

That thereafter the rights, franchises, privileges and property of the said Carondelet Railway Company were transferred, so far as the same could be transferred, to the South St. Louis Railway Company, under authority of Ordinance 10,105, approved July 13, 1876, which ordinance is as follows:

(10,105.)

An ordinance to amend ordinance number nine thousand and twenty-five entitled "An ordinance authorizing the Carondelet Railway Company to construct their road along certain streets in the City of St. Louis," and giving consent to the transfer of the franchises of the Carondelet Railway Company to the South St. Louis Railway Company.

Be it ordained by the City Council of the City of St. Louis:

SECTION 1. Ordinance number nine thousand and twenty-five, entitled "An ordinance authorizing the Carondelet Railway Com-

pany to construct their road along certain streets in the City of St. Louis," is hereby amended by striking out part of section one after the words "in the City of St. Louis," the following: "Commencing at the intersection of Chippewa street with Carondelet road, thence south on Carondelet road to Meramec street, thence west on Meramec street to the Stringtown road, thence south on Stringtown road to Dover street, thence west on Dover street to Fourth street, thence south on Fourth street to the intersection of Stein street and County road, thence south on the County road to Franklin street, thence east on Franklin street to Third street, thence south on Third street to Davis street, thence east on Davis street to Main street, thence north on Main street to Elwood street, thence west on Elwood street to Fourth street, all the above route being within the present limits of the First Ward," and in lieu thereof insert the following: "Commencing at the intersection of Jefferson avenue and Chippewa street, thence south on Jefferson avenue and Carondelet road to Elwood street, thence south on Main street to Davis street, thence north on Davis street to Second street, so soon after the completion of the grading and macadamizing of said Carondelet road and Main street as is practicable, and the rights, franchises and privileges heretofore granted to the Carondelet Railway Company are hereby transferred and confirmed to the South St. Louis Railway Company, to be by said company as fully enjoyed as if the same had been originally granted to said South St. Louis Railway Company."

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SEC. 2. Ordinance number nine thousand and twenty-five is also hereby amended by striking out all of section two, and also by changing section three to section two; section four to section three; section five to section four; section six to section five; section seven to section six; section eight to section seven; section nine to section eight; section ten to section nine; section eleven to section ten; section twelve to section eleven; section thirteen to section twelve; section fourteen to section thirteen; section fifteen to section fourteen; section sixteen to section fifteen; section seventeen to section sixteen.

SEC. 3. The said railroad company is hereby authorized and instructed to remove their track from the following streets, to-wit: Meramec street from Carondelet avenue to the Stringtown road; thence south on the Stringtown road to Dover street; thence east on Dover street to Fourth street; thence south on Fourth street to the intersection of Stein street; thence south on the Carondelet road to Franklin street; thence east on Franklin street to Third street; thence south on Third street to Davis street; thence east on Davis street to the intersection of Second street with Davis street; also from the intersection of Fourth street and Elwood street to Main street on Elwood street.

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SEC. 4. The cost of the removal of said track shall be borne exclusively by said railway company, and the said company shall place the said streets and avenues to be so vacated by them, in good order to the satisfaction of the City Engineer.

SEC. 5. The said railway company shall cause said removal of their track from the streets aforesaid to be completed within ninety

days from the approval of this ordinance, and shall within ten days from the approval thereof file with the City Register their written acceptance of the provisions of this ordinance, and in case said company shall fail to file said acceptance as herein provided for, then this ordinance shall become null and void.

SEC. 6. Whenever the City Engineer of the City of St. Louis shall notify the President or Superintendent of the South St. Louis Railway Company, that any part of the street between the tracks of said railway company, or any part or the whole of the tracks of said railroad company, or any culvert, constructed by said railroad company, is out of repair or in bad condition, it shall be the duty of said South St. Louis Railway Company to proceed at once to place all of said street between the tracks and culverts in complete repair, of such materials as it may be then repaired or that may hereafter be reconstructed, and place them in good condition to the entire satisfaction of the City Engineer, and within such time as shall be designated by the City Engineer in his notice, as in his judgment said work can be done. If said repairs or reconstruction are not
134 completed within the time so designated by the City Engineer, then and in that event the City Engineer shall cause all such repairs or reconstruction to be done, and shall certify to the City Collector the entire cost of all such repairs or reconstruction so done by the City Engineer, as a bill of costs due and payable to the City of St. Louis, from said South St. Louis Railway Company, which said bill of costs shall be paid by the said South St. Louis Railway Company upon presentation, and for each day that said South St. Louis Railway Company shall — in default in the payment of said bill of costs, the City Collector shall add thereto, as a penalty for such default five dollars for each day, to be paid by said South St. Louis Railway Company, and if said South St. Louis Railway Company shall fail to pay said bill of costs and all penalties thereto added for the period of ninety days from the date of the first presentation of same for payment, then and in that event of said default of said payments, shall operate and work a complete forfeiture of all the rights, franchises and privileges of said South St. Louis Railway Company granted by this ordinance, and the said South St. Louis Railway Company's Directors and Stockholders do hereby for themselves, their heirs and assigns, agree during the continuance of this franchise, to faithfully and unequivocally conform to the provisions of this section in all and every part of its most minute details and penalties.

SEC. 7. The said South St. Louis Railway Company shall acquire no privileges, rights, or franchises under this ordinance, unless said South St. Louis Railway Company shall within thirty days from the approval of this ordinance, file with the City Register the acceptance in writing of said railroad company of this ordinance, and the assent of said railroad company to all the provisions and penalties of the same, and said South St. Louis Railway Company shall at the same time file a bond in the office of the City Register in the penal sum of Twenty Thousand Dollars, with three or more good
135 and sufficient sureties, to be approved by the Mayor, for the faithful performance of all the conditions and obligations of

this ordinance and of Article four, Chapter twenty-five, of the revised ordinances in relation to street cars.

Approved July 13, 1876.

And thereafter the lines were extended to other streets as per Ordinance 10,824, approved July 16, 1878, which ordinance is as follows:

(10,824.)

An ordinance amendatory and supplementary to ordinances numbered nine thousand and twenty-five, and ten thousand one hundred and five, and to authorize the South St. Louis Railway Company to extend its tracks northwardly from Chippewa street along Jefferson avenue and certain other streets in the City of St. Louis, and to operate the same, and to repeal section eleven of ordinance number nine thousand and twenty-five, and as amended by section two of ordinance number ten thousand one hundred and five, and all ordinances and parts of ordinances conflicting herewith.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The South St. Louis Railway Company is hereby authorized to extend its tracks and to operate the same subject to and in accordance with the provisions of ordinance number nine thousand and twenty-five, entitled "An ordinance authorizing the Carondelet Railway Company to construct their road along certain streets in the City of St. Louis," and ordinance number ten thousand one hundred and five, entitled "An ordinance to amend ordinance number nine thousand and twenty-five entitled 'an ordinance authorizing the Carondelet Railway Company to construct their road along certain streets in the City of St. Louis,' and giving consent to the
136 transfer of the franchise of the Carondelet Railway Company to the South St. Louis Railway Company" upon the following streets and avenues, viz.: Commencing at the present northern terminus at the intersection of Chippewa street and Jefferson avenue, thence north on Jefferson avenue with double track to Arsenal street, thence with single track east on Arsenal street to the intersection of Arsenal and Eighth streets, thence north on Eighth street to the intersection of Pestalozzi and Eighth streets, thence north with double track on Eighth street and Decatur street to the intersection of Russell avenue, thence north with double track on Decatur street to Lafayette street, thence east on Lafayette street with double track to Eighth street, thence north on Eighth street with double track to Hickory street, thence with double track east on Hickory street to Sixth street, thence with double track north on Sixth street to Market street. Said company shall also have the right to extend and operate its tracks north on Jefferson avenue with single track from Arsenal street to Pestalozzi street, thence east on Pestalozzi street to Eighth street. Said company shall also extend its tracks south on Main street from its present southern terminus to the south line of Catalan street; provided, however, that until the northwest corners of Lynch

and Eighth streets and Park avenue and Eighth street, and Decatur and Sydney streets, shall be acquired for railroad purposes, so that said Eighth street can be straightened as nearly as may be to the satisfaction of the Street Commissioner, said South St. Louis Railway Company shall at said corners lay down but one track in crossing said Lynch and Sydney streets and Park avenue; provided, further, that said company in operating the road shall run its cars east on Pestalozzi street and west on Arsenal street; and provided further, that the Board of Public Improvements shall have complete supervision and control over the work to be done on said South St. Louis Railroad, in the laying of its tracks over and upon the public
137 highways herein granted to be laid down, both as to the manner of laying said tracks as also the placing them and, further, to designate the size of the iron to be used, and all the above shall be done to the satisfaction of said Board of Public Improvements. Provided, further, that permission is hereby given said South St. Louis Railway Company to lay a single track on Wyoming street from Jefferson avenue east to Eighth street, and north on Eighth street to the intersection of Eighth and Pestalozzi streets, in lieu of a track on Pestalozzi street, whenever Wyoming street is improved sufficiently to enable the company to make the proposed change and whenever the change is made the track on Pestalozzi street shall be taken up, and the right to keep a track or tracks thereon shall be hereby annulled. Provided, further, that if an agreement can be entered into between the South St. Louis Railway Company and the Union Depot Railway Company, by the terms of which the South St. Louis Railway Company can purchase the tracks of the Union Depot Railway Company, between Park avenue and Russell avenue, for the consideration that the South St. Louis Railway Company will undertake to build and will build an equal amount of track on State street, then the South St. Louis Railway Company may lay a double track on State street, between Russell avenue and Park avenue, and may assign and sell the same, together with the right to build and operate a road on said State street to the Union Depot Railway Company, and said South St. Louis Railway Company may then run its cars over the tracks so purchased, and may make the necessary connections over Park avenue, between Eighth and Decatur streets, for that purpose. And provided, further, that said South St. Louis Railway Company, in lieu of constructing a new and independent track on Decatur or Ninth street, as herein provided, may run its cars between Lafayette street and Russell avenue, over and upon the track of the Union Depot Railway Company, in accordance with the provisions of section six of article ten, of the charter upon the payment
138 to said Union Depot Railway Company of a just compensation for the use of their said track, and complying with such conditions as may be practicable and just, all of which shall be amicably determined between the parties; but if the parties are unable to agree on such compensation and conditions, then the same shall be determined by three commissioners to be appointed as follows, viz.: One by each of said railway companies and the third one

by the other two so chosen by said companies, none of which arbitrators or commissioners shall be interested as stock or bond holders in any street railroad, and the decision of a majority of said commissioners shall be binding on the two railway companies. In case of a neglect or refusal on the part of the Union Depot Railway Company to make such appointment of arbitrators, as herein required, such neglect or refusal shall entitle the South St. Louis Railway Company to appoint two disinterested arbitrators who shall determine the amount of compensation to be paid therefor. Provided, further, that said two arbitrators shall not be appointed until after thirty days from the notification by said South St. Louis Railway Company to said Union Depot Railway Company to appoint an arbitrator. When appointed the commissioners shall proceed to assess the damages caused by the use of said track, which damage shall be one-half the cost of construction of that portion of the track so used, and one-half the annual expense of keeping the same in repairs, and such other compensation as the arbitrators may think just.

SEC. 2. Said South St. Louis Railway Company is further authorized to lay down and maintain curves and switches where its tracks cross the tracks of the Cass Avenue and Fair Grounds Railway Company, in order that a ready transfer of its cars may be made to the tracks of the latter company, and whenever satisfactory arrangements can be made between said companies, they shall have the right to operate and run their cars in common over the tracks of each. They shall be permitted, however, to charge separate fares on either
139 of the roads so used in common. Provided, however, that nothing in this ordinance shall be so construed as to authorize the South St. Louis Railway Company to charge and collect more that a single fare of five cents in ticket or seven cents in cash when tickets are not used over the entire length of its road. Provided, further, that it is the purpose of this ordinance to procure the construction and the operation of a street railway from the south line of Catalan street in the former city of Carondelet, to Sixth and Market streets, in the City of St. Louis, under one management, for the single fare above mentioned, both to and from the points as above stated, and any transfer or mortgage of the franchise, or of the property thereunder held or acquired, shall cover and embrace the whole of the property and franchises of the South St. Louis Railway Company between the points above mentioned, and a failure to operate their roads over the entire distance between the above named points, or a transfer of the property or franchise, or any part thereof, or a failure to comply with any of the provisions of this ordinance by this company, shall work a forfeiture of this franchise.

SEC. 3. Said South St. Louis Railway Company shall commence the construction of said extension of their road within four months after the passage of this ordinance and shall be required to complete the road and commence the operation of the same within twelve months from and after the passage of this ordinance, otherwise this ordinance shall become null and void and of no effect.

SEC. 4. The South St. Louis Railway Company shall make full

trips the entire length of its road, from the point of beginning at the south side of Catalan street to their terminus at Sixth and Market streets, from five o'clock a. m. to twelve o'clock p. m. so that the cars shall at least pass any given point on said road at intervals not exceeding ten minutes from five o'clock a. m. to eight o'clock
140 p. m. during the summer, and from six o'clock a. m. to eight o'clock p. m. during the winter, and from eight o'clock p. m. to 12 o'clock p. m., at intervals not exceeding fifteen minutes. Subject, however, to all restrictions and regulations which are now or may hereafter be enacted by ordinance.

SEC. 5. Before availing themselves of the privileges granted by this ordinance, the South St. Louis Railway Company shall file a bond in the sum of Five Thousand Dollars, with two or more good and sufficient securities, owners of unincumbered real estate, situated in the City of St. Louis, to be approved by the Mayor and Council, conditioned that they, the said South St. Louis Railway Company, will at all times redeem any and all tickets issued by them and used upon other street railroads in the City of St. Louis; and if at any time, in the opinion of the Mayor, the bond shall become insufficient, then upon notice to that effect, a new bond shall be furnished.

SEC. 6. The South St. Louis Railway Company shall file with the Register of the City of St. Louis, within sixty days from the passage of this ordinance its written acceptance of the provisions of this ordinance, in relation to each and every part thereof, which written acceptance shall be signed by the President and a majority of the Directors of said company, attested by its secretary, and the corporate seal of the company attached. Any failure on the part of the said South St. Louis Railway Company to file said written acceptance within the time provided by this section, shall be held to be a refusal on the part of the said South St. Louis Railway Company to accept the conditions of this ordinance, and the privileges and franchises herein granted shall lapse and be null and void in law and in fact; provided, further, that with the beforementioned acceptance there shall be filed with the Register a bond in the sum of Twenty Thousand Dollars, to be approved by the Mayor and the Council, when it shall be in session, which bond shall be accom-
141 panied with two or more good and sufficient securities, owners of unincumbered real estate, and shall be conditioned that on failure to complete and operate the road as required in section three of this ordinance then and in that event, the same shall be forfeited to the city.

SEC. 7. The South St. Louis Railway Company is hereby authorized to use any motor for the traction of its cars that may be deemed safe and serviceable to that end; provided, that before doing so an application shall first be made to the Board of Public Improvements, which application shall be accompanied by plans and specifications, giving a perfect explanation of the designed motor; whereupon, if the same shall be deemed satisfactory and calculated to promote public convenience, the Board shall submit an ordinance to the Municipal Assembly granting permission to the company to

use the same for the period of six months, after the passage of said ordinance.

SEC. 8. Whenever it shall appear that the South St. Louis Railway Company has failed to comply with the conditions of this ordinance which may hereafter be enacted for the government of street railways, in keeping such portions of the public streets and crossings in repair as is used by them, and should permit them so to remain for five days after notice from the Street Commissioners to repair said street or crossings, the Board of Public Improvements shall have the work done at the expense of said railway company; and that a faithful compliance with the provisions of this section may be assured, the said South St. Louis Railway Company shall deposit with the City Treasury the sum of Five Hundred Dollars as a special deposit for the purpose of paying for such repairs as the Board of Public Improvements may find it necessary, under the provisions of this or of any general ordinance governing street railways in this respect, to make. Whenever there shall be a sufficiency in
142 the deposit above named, the President of the Board of Public Improvements shall give notice that such deficiency exists, and a failure to make such deficiency good within ten days after due notice shall have been given, shall cause a forfeiture of the privileges granted by this ordinance.

SEC. 9. Section eleven of ordinance number nine thousand and twenty-five, and as amended by section two of ordinance number ten thousand one hundred and five, and all ordinances and parts of ordinances conflicting herewith are hereby repealed.

Approved July 16, 1878.

Thereafter the South St. Louis Railway Company transferred its rights, property and privileges, so far as the same could be transferred, to the Southern Railway Company about the year 1884, under authority of Ordinance 12,973, approved June 11, 1884, and said Southern Railway Company extended its lines thereafter as per Ordinance 14,089, approved July 19, 1887, said Ordinances being as follows:

(14,089.)

An ordinance authorizing the Southern Railway Company to extend its road and run its cars from its present terminus on Sixth street, near Market street, over, through and along certain streets in the City of St. Louis.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby granted to the Southern Railway Company to extend its lines, lay its single track and operate its cars on such extension by horse power only, in conjunction with its present lines in the City of St. Louis, on the terms and conditions in this ordinance prescribed, as follows: Beginning at its present terminus on Sixth street, near Market street,
143 thence eastwardly along Market street to Broadway, thence northwardly along Broadway to Wash street, thence west-

wardly along Wash street to Sixth street, thence southwardly along Sixth street to place of beginning.

SEC. 2. For the purposes aforesaid the said company is hereby authorized and empowered to acquire from the Missouri Railroad Company the right to use, in conjunction with it, the tracks of the latter company on Market street, between Sixth street and Broadway, and on Sixth street, between Chestnut and Market streets, and thereupon may use the track and tracks of the Missouri Railroad Company on said streets on such terms as the companies may agree upon; and further, to acquire from the St. Louis Railroad Company the right to use, in conjunction with it, the tracks of the latter company on Broadway, between Market and Wash streets, and thereupon may use the track and tracks of the St. Louis Railroad Company on said street on such terms as the companies may agree upon; and further to acquire from the Union Railroad Company the right to use in conjunction with it the tracks of the latter company on Sixth street, between Wash and Locust streets, and may thereupon use the track or tracks of the Union Railroad Company on said street on such terms as the two companies may agree upon; and further to acquire from the Union Depot Railroad Company the right to use in conjunction with it the track of the latter company on Sixth street, between Locust and Pine streets, and may thereupon use the track or tracks of the Union Depot Railroad Company on said street on such terms as the companies may agree upon. Provided, that the Southern Railway Company shall, under the supervision of the Street Commissioner, lay and maintain the tracks called for in this ordinance at its own cost and expense. And provided further, that the said company shall at its own cost and expense keep the space between its tracks and rails, and for the space of 1 foot outside of the rails, in complete repair and condition, with the same material or better material, than used for the re-
144 mainder of the street on which its tracks may be laid, all of which work shall be done to the satisfaction of the Board of Public Improvements and thereafter maintained to their satisfaction.

SEC. 3. Nothing in this ordinance shall be construed as extending the time when the franchise of the said Southern Railway Company shall terminate, and this ordinance shall cease and be null and void at the termination of the franchise of said company as fixed by law, and the ordinances of the city in force previous to the passage of this ordinance.

SEC. 4. Before the said Southern Railway Company shall commence the construction of any part of the work herein provided, it shall first obtain from the Missouri Railroad Company and the St. Louis Railroad Company, and the Union Railroad Company, and the Union Depot Railroad Company, the rights to use their said tracks, and file in the office of the City Register the certificate of the City Counselor to the effect that the Southern Railway Company has obtained said right from said companies, and shall at the same time file in the office of the City Register its written acceptance of all the provisions of this ordinance and its bond in the sum of $5,000,

with two or more solvent securities, conditioned that it will comply with all the provisions of this ordinance, which certificate, acceptance and bond shall be filed, as herein provided, within sixty days from the time it shall acquire such rights, and that said company will complete the tracks herein provided to be laid within six months from the time it shall acquire such rights; otherwise this ordinance and all its provisions shall be null and void.

SEC. 5. If the said Missouri Railroad Company, and the said St. Louis Railroad Company, and the said Union Railroad Company, and the said Union Depot Railroad Company, or either of them, fail to agree with said Southern Railway Company for the use of their respective tracks, in the manner hereinbefore contemplated, then said Southern Railway Company may obtain such right to operate and run its cars on the track of the company so failing and refusing to agree as provided in ordinance No. 12,652, entitled "An ordinance to carry out the provisions of section 6 of article 10 of the Charter of the City of St. Louis, and to prescribe rules to ascertain and fix the compensation for the use of the track or part or parts of track of Street Railroad Companies," approved January 12, 1884, or any ordinance amendatory thereof, and thereupon shall have, and enjoy the same rights to the use of the streets hereinbefore granted, the same as if the agreements had been made as hereinbefore contemplated."

SEC. 6. In consideration of the rights and privileges granted by this ordinance to said Southern Railway Company, its successors and assigns, said company agrees to and will pay to the City of St. Louis, on the first day of January in each year, beginning with the first day of January, 1893, the sum of one thousand dollars, which shall be in addition to all taxes, as now or hereafter prescribed by law, and a failure on the part of said company or its successors, or assigns, to pay any installment aforesaid within sixty days after the same becomes due and payable, shall under this ordinance become void, and all the rights and franchises hereby granted to the Southern Railway Company shall revert to the City of St. Louis.

Approved July 19, 1887.

(12,973.)

An ordinance giving consent to the transfer of the franchises, rights and privileges of the South St. Louis Railway Company to the Southern Railway Company, and defining fully the rights, franchises and privileges herein granted to the Southern Railway Company.

Whereas, the South St. Louis Railway Company executed certain bonds secured by deed of trust on its property and franchises, and a sale thereof was had under said deed of trust, and the Southern Railway Company, being a corporation under the laws of Missouri, has now become the owner of said property and franchises, and intends to continue the operation of said street railway; now, therefore,

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The rights, franchises and privileges heretofore granted by ordinance to the South St. Louis Railway Company are hereby transferred and confirmed to the Southern Railway Company, to be by it as fully enjoyed as if the same had been originally granted to said Southern Railway Company.

SEC. 2. The Southern Railway Company is hereby authorized to construct, maintain and operate its railway upon and along the following streets and avenues in the City of St. Louis: Commencing at the intersection of Sixth and Market streets, thence with double track on Sixth street to Hickory street and on Hickory street to Eighth street, and on Eighth street to Lafayette street, and on Lafayette street to Decatur or Ninth street, thence on said Ninth or Decatur street and its continuation, with double track, to Pestalozzi street, and with single track from said Pestalozzi street on Ninth street to Arsenal street, and on Arsenal street to Jefferson avenue, and also with single track on Pestalozzi street from Ninth street to Jefferson avenue, and on Jefferson avenue to Arsenal street; thence with double track on Jefferson avenue to its intersection with South Broadway, and on South Broadway to the south line of Catalan street.

SEC. 3. The said Southern Railway Company shall be subject to the same taxes and burdens that are now imposed on the South St. Louis Railway Company and all debts and obligations due or to become due from said last mentioned corporation or its property to the City of St. Louis shall be met, assumed and paid by
147 said first mentioned corporation, and the Southern Railway Company and its property shall be subject to all ordinance provisions of the City of St. Louis relating to street railways, now in force or which may hereafter be adopted.

SEC. 4. The said Southern Railway Company shall acquire no privileges, rights or franchises under this ordinance, unless it shall, within thirty days from the approval of this ordinance, file with the Register of this city its acceptance in writing of this ordinance and its assent to all the provisions of the same.

SEC. 5. The transfer and confirmation of the franchises of the South St. Louis Railway Company to the Southern Railway Company, or its assigns, shall not affect the liability of the latter company, or of its assigns, for any general or special taxes, or for any assessments for street improvements made against said South St. Louis Railway Company, or its property, nor shall it invalidate the same, but said Southern Railway Company and its property shall be and remain liable for such taxes and assessments to the same extent as the same now is, and it further agrees to conform to article ten of the present Charter of the City of St. Louis.

Approved June 11, 1884.

. Thereafter further extensions were made by said Railway Company as per Ordinance 14,837, approved March 18, 1899, which ordinance is as follows:

(14,837.)

An ordinance authorizing the Southern Railway Company to maintain and operate its railroad, and to have an extension of its rights and franchises.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Southern Railway Company, its successors or assigns, is hereby confirmed in its present rights and fran-
148 chises, granted under the charter of the City of St. Louis, and is authorized to maintain its road and tracks and operate its cars over and across the streets and public places of the City of St. Louis, as follows: Commencing at the intersection of Sixth and Market streets, thence with double track on Sixth street to Hickory street, and on Hickory street to Eighth street, and on Eighth street to Lafayette street, and on Lafayette street to Decaur or Ninth street; thence on said Ninth or Decatur street and its continuation, with double track to Pestalozzi street, and with single track from said Pestalozzi street on Ninth street to Arsenal street, and on Arsenal street to Jefferson avenue, and also with single track on Pestalozzi street from Ninth street to Jefferson avenue, and on Jefferson avenue to Arsenal street; thence with double track on Jefferson avenue to its intersection with South Broadway, and on South Broadway to the south line of Catalan street; and also commencing at the above northern terminus on Sixth street near Market, thence eastwardly along Market street to Broadway, thence northwardly along Broadway to Wash street, thence westwardly along Wash street to Sixth street, thence southwardly along Sixth street to said terminus on Sixth street near Market street. Provided, that nothing in this ordinance shall be construed as giving the Southern Railway Company the right to lay a track on Market street between Sixth street and Broadway, or on Broadway between Market street and Wash street, or on Sixth street between Wash street and Pine street, or on Sixth street between Chestnut street and Market street; and it is authorized to lay a single track only on Wash street between Broadway and Sixth street, and on Sixth street between Pine street and Chestnut street.

SEC. 2. In consideration of the rights and privileges granted by this ordinance to the Southern Railway Company, its successors and assigns, said company agrees to and will pay to the City of
149 St. Louis on the first day of January in each year, beginning with the first day of January, A. D. 1899, to and including the year 1909, the sum of two thousand dollars, and for each and every year after the year 1909, and until the expiration of the time for which the rights and privileges hereby confirmed and granted are continued by this ordinance, the sum of five thousand dollars on the first day of January in each of said years, which shall be in addition to all taxes as now or that may hereafter be prescribed by law. This ordinance shall be and remain in force for the term of fifty years from and after the date of its approval. Any failure on

the part of said company, or its successors or assigns, to pay any installment of money herein provided to be paid into the treasury of the City of St. Louis within sixty days after the same becomes due and payable, shall render this ordinance null and void.

SEC. 3. The track or tracks hereinbefore mentioned shall be made to conform to the grade which the city may establish, and shall be laid along the center of the streets before designated; and the Southern Railway Company shall, at its own cost and expense, keep the space between the tracks and rails and for the space of one foot outside of the rails of said company in good repair, with the same or better material as the adjacent street, and as nearly on a level with such rails as practicable, except that the space between the rails at the curves, crosstracks, and the space between the tracks at the curves shall be paved with stone or wood blocks or some other material equally as good, and to the satisfaction of the Street Commissioner. In order to insure a faithful compliance with the provisions of this ordinance relative to the repairs of streets and tracks, the said Southern Railway Company shall be required to pay into the city treasury, within ten days after the acceptance of this ordinance, the sum of one hundred dollars as a special fund for the purpose of defraying the cost of making such repairs by the Street Commissioner, as the said company may be liable to make under the provisions of
150 this ordinance, and fail to make, and which, in the opinion of the Street Commissioner, may be necessary to be done; provided, that notice shall first be sent by the Street Commissioner to said company to make such repairs, said notice to specify the time in which such repairs shall be done. Whenever there shall be a deficit in the deposit above mentioned in consequence of a part or whole of said deposit having been used for repairs by the Street Commissioner, as herein provided, the Street Commissioner shall notify said company, in writing, that such deficiency exists, and a failure to make such deficiency good within ten days after such notice shall have been given, shall be considered a misdemeanor, and on conviction thereof before either of the Police Justices, said company shall be fined not less than ten dollars for each and every day said deficiency exists after the expiration of the ten days given in the notice last above mentioned. Within two years from the approval of this ordinance said Southern Railway Company agrees to apply to the Municipal Assembly for and accept an ordinance giving permission to change its motive power to either cable laid underground, or to electricity supplied by storage batteries carried on the cars, said change of motive power to be operative within two years from the passage of said ordinance. Failure on the part of said railway company to carry out the provisions of this section will work a forfeiture of all the privileges granted in this ordinance.

SEC. 4. The Southern Railway Company shall not be entitled to any of the rights or franchises granted by this ordinance unless within thirty days from the approval thereof it file with the City Register its written acceptance of the terms and conditions of said ordinance, and also its penal bond in the sum of twenty thousand dollars, with two or more sureties, owners of unincumbered real

estate in the City of St. Louis, payable to said City of St. Louis, to be approved by the Mayor and Council, conditioned that said
151 Southern Railway Company shall and will perform and comply with all the terms and conditions of this ordinance.

SEC. 5. Nothing in this ordinance shall be construed as releasing the Southern Railway Company from any of its obligations to the City of St. Louis under any ordinance now in force in reference to the Southern Railway Company, but that the extension of its franchise for the term of fifty years from and after the approval of this ordinance is accepted by the Southern Railway Company as carrying with it all the privileges and requirements now in force referring to street railroads in the City of St. Louis.

SEC. 6. The cars of said company shall be operated upon that portion of its line herein designated, between the hours of five o'clock a. m. and twelve o'clock midnight, and cars shall be run thereon between the hours of five o'clock a. m. and nine o'clock a. m. at intervals of not greater than seven minutes, and between nine o'clock a. m. and five o'clock p. m. at intervals not greater than seven minutes, and from seven o'clock p. m. to twelve o'clock p. m. at intervals not greater than fifteen minutes. Any wilful failure on the part of said company to operate its road and its cars as herein provided shall be deemed a misdemeanor, and upon conviction thereof said company shall be fined for each day of such failure not less than fifty dollars. Said railway company shall not charge for a single passage one way over its road more than five cents for an adult, and two and one-half cents for a child under twelve years of age.

Approved March 18, 1889."

Further extensions were thereafter made as per ordinance 17,693, approved July 21, 1894, which ordinance is as follows:

(17,693.)

"An ordinance enlarging the franchise of and authorizing
152 the Southern Railway Company, its successors and assigns, to extend its line along Walnut street, west from Sixth to Seventh street, and on Seventh street north to Howard street, and on Cass avenue ast to Sixth street, and on Sixth street south to O'Fallon, and east on O'Fallon to Broadway, and thence south on Broadway to Wash street, and west on Wash street to Sixth street; thence south on Sixth to and across Market street; and also on Loughborough avenue and Gravois avenue; and also authorizing said company, its successors and assigns, to operate its lines as thus extended over the tracks of other street railways on said route, by electricity, and defining the conditions thereof.

Wheras, the Municipal Assembly of the City of St. Louis did heretofore authorize the Southern Railway Company, its successors and assigns, by ordinance fourteen thousand eighty-nine, approved July nineteenth, eighteen hundred eighty-seven, and by ordinance number fourteen thousand eight hundred, thirty-seven, approved

March eighteenth, eighteen hundred eighty-nine, to extend its lines and lay its single track, and operate its cars from its present terminus on Sixth and Market streets east along Market street to Broadway, thence north on Broadway to Wash, thence west on Wash to Sixth street, and thence south on Sixth street to the terminus at Market street aforesaid; and,

Whereas, Doubts have arisen as to whether such authority includes the right to use electricity in the operation of said lines as thus projected; and,

Whereas, Also to make the operation of the lines of said company north of Market street more practicable for the accommodation of the public, the street franchise of said company should be enlarged; and,

Whereas, Said Southern Railway Company has assigned all its franchises to its successors, the Southern Electric Railroad Company,

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

153 SECTION 1. The Southern Railway Company, its successors and assigns, are hereby authorized to operate and maintain its line of railroad, as by this ordinance enlarged; also by electric power, carried by overhead wire or wires, and for that purpose said company may from time to time make all needful changes in its road or line, including curves, turnouts, connections with its car sheds and power house, and erection of poles. Said poles shall be of iron, and placed along the curb of the street to carry overhead wires, said wires shall not be less than twenty feet above the surface of the street, to carry said motive power into practical effect upon and along the streets and places where said road or line is projected, or authorized to be projected.

SEC. 2. Said Southern Railway Company, its successors and assigns, may run its cars on its lines as by this ordinance extended north of Market street at a rate of speed not exceeding ten miles per hour.

SEC. 3. Within sixty days after the approval of this ordinance, and before beginning any alterations or reconstructions of its railroad under this ordinance, made necessary by the adoption of such overhead wires, said railway company, its successors and assigns, shall file with the City Register its written acceptance of all the provisions of this ordinance, and shall also execute its bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more securities, to be approved by the Mayor and Council, conditioned to hold the City of St. Louis harmless from all damages that may be sustained by the City of St. Louis, or any person or persons, during the construction and operation of the line effected by the said changes in its railroad; and that the portions of the streets disturbed by such alteration shall be restored by said railway company at its own cost and expense, to the satisfaction of the Street Commissioner, and that said railway company, its successors and assigns, will comply with all the terms and conditions of this ordinance and all general ordinances and charter provisions now in

154 force, or that may hereafter be passed in reference to street railways.

SEC. 4. The said Southern Railway Company, its successors and assigns, is hereby authorized to acquire for compensation from the other companies whose railways are operated over the streets herein mentioned, by electricity, the right to use the poles, wires and currents of such other railroad companies.

SEC. 5. Said Southern Railway Company, its successors and assigns, is also authorized to construct a curve from its present north-bound track on Sixth street, and to connect the same at Walnut street with the west-bound tracks of the Cass Avenue and Fair Grounds Railway Company, and to operate its cars by electricity along said Walnut street from Sixth street to Seventh street, and thence north, also by electricity over the said track of the said Cass Avenue and Fair Grounds Railway Company to Cass avenue; thence continuing north on Seventh street by its own double tracks, also by electricity, to Howard street. And at the intersection of Howard street and Broadway, to construct a loop to turn its cars on. Thence from such loop south on Seventh street to Cass avenue; thence east by single track on Cass avenue, also by electricity, to Sixth street, then south by single track on Sixth street, also by electricity, to O'Fallon street; thence east by single track on O'Fallon street, also by electricity, to Broadway, and there to connect the same with the south-bound track of the St. Louis Railroad Company, and from there to continue its line and operate its cars by electricity over the said track of the said last named company to Wash street, and from there to continue its line, also by electricity, under the ordinances hereinbefore mentioned, west and south to Sixth and Market streets, with power to string wires and erect poles in the same manner as authorized upon other parts of its road. Also to continue its single track on Sixth street by a separate single track southwardly
155 from the north line of Chestnut street to the south line of Market street, with power to erect poles and string wires in the same manner as authorized upon other parts of its road. And said company, its successors and assigns, is also hereby authorized to cross the tracks of any and all other street railroads, and to construct and lay all turn-outs and curves necessary to the extension and completion of its line, as hereby authorized, and also to acquire for compensation from said other street railway companies hereinbefore named, the use of their tracks as herein specified.

SEC. 6. Said Southern Railway Company, its successors and assigns, are hereby authorized and permitted to run its cars over and upon that portion of its line from Market street to Russell avenue, at a speed not greater than ten miles per hour, and between Russell avenue and Catalan street and on Loughborough avenue and Gravois avenue, at a speed not greater than fifteen miles per hour.

SEC. 7. Nothing in this ordinance shall be construed as releasing the Southern Railway Company from any of its obligations to the City of St. Louis under ordinance numbers fourteen thousand eighty-nine, and fourteen thousand eight hundred thirty-seven, or from paying to the City of St. Louis the compensation provided for in said ordinances, respectively. And in consideration of the rights, privileges and franchises granted by this ordinance, the said South-

ern Railway Company, its successors and assigns, in addition to the sum provided for by it to be paid under section six of ordinance number fourteen thousand eighty-nine, and section two of ordinance number fourteen thousand eight hundred thirty-seven, shall pay ten thousand dollars into the City Treasury, annually, beginning on the first day of January, eighteen hundred ninety-six, and continuing thereafter down to the expiration of its franchise.

Any failure on the part of the said company, its successors
156 or assigns, to pay any installment of money herein provided to be paid, into the Treasury of the City of St. Louis, within sixty days after the same becomes due and payable, shall render this ordinance null and void.

SEC. 8. Within thirty days after said Southern Railway Company, its successors and assigns, shall be actually operating its cars over the loop hereby authorized by way of Seventh street and Cass avenue, O'Fallon street, Broadway and Sixth street, it shall file with the City Register its relinquishment of all right to operate its cars on Market street from Sixth street to Broadway, and on Broadway from Market street to Wash street.

SEC. 9. Nothing in this ordinance shall be construed as authorizing the Southern Railway Company, its successors and assigns, to erect poles and wires upon any streets where such poles and wires are now erected, and the companies owning the same are required by law to permit the use thereof by other companies for compensation, but said company shall acquire the use of such poles and wires from such railway companies owning and operating the same.

SEC. 10. Said Southern Railway Company, its successors and assigns, shall, at its own cost and expense, keep the space between its own tracks and rails, and one foot outside the rails, in good repair, and if the streets through which said tracks are laid are reconstructed, said Southern Railway Company shall reconstruct the space between their tracks and rails, and one foot outside thereof, with the same or better material as the adjacent street, and as nearly on a level with such rails as practicable.

SEC. 11. Said Southern Railway Company, its successors and assigns, are authorized to construct on Loughborough avenue, beginning with connections with its present double track on Broadway,
double tracks along and across all cross streets, railroads and
157 bridges to Gravois avenue; thence to continue northeast on Gravois avenue with double tracks to Bates street; thence east on Bates street with a double track to Broadway, to connect with the double track of the Southern Railway Company, with power to lay curves and tracks, and to erect poles and string wires in the same manner as authorized upon other parts of its road. And to operate its cars over the extensions of its tracks by this section authorized, by electricity, in the same manner as provided upon other parts of its lines.

SEC. 12. The provisions of section eleven hereof shall be null and void unless said Southern Railway Company shall grade from curb to curb that portion of Loughborough avenue, Gravois road and Bates street through which its road is authorized to be constructed,

and also unless the said tracks are laid and the road operated within two years from the date of the passage of this ordinance.

SEC. 13. The Southern Railway Company shall run its cars over their entire line, when completed and as provided in this ordinance, every day in the year, during the life of their franchise, between the hours of six o'clock a. m. and eight o'clock p. m., at intervals not greater than five minutes, and from eight o'clock p. m. to midnight, at intervals not greater than ten minutes, and from midnight to six o'clock a. m., at intervals not greater than one hour. The fare from any one point on said road to any other point on said road shall not exceed two and one-half cents for children over four and under twelve years of age, and not exceed five cents for persons over twelve years of age, for a continuous passage one way; children's tickets shall be sold by the conductor on the cars two for five cents.

Approved July 21st, 1894."

And thereafter on the — day of ——, 1893, the Southern Railway Company transferred its property, rights and franchises,
158 so far as the same could be conveyed by it, to the Southern Electric Company; all of said ordinances were accepted by the Southern Railway Company and by the Southern Electric Railroad Company and by deed of September 19, 1899, the United Railways Company acquired all the property, rights, privileges and franchises of said Southern Electric Railway Company, so far as the same could be conveyed by deed, and on the 30th of September, 1899, leased the same to the St. Louis Transit Company for a period to terminate April 1st, 1939. Said lines have been operated by said Company since, and all of the conditions of the aforesaid ordinances have been kept and performed by the aforesaid companies.

(14) Amongst the lines of street railways in said city owned by the United Railways Company and operated by the St. Louis Transit Company are the lines formerly known as the Lindell Company, including lines constructed by the Compton Heights, Union Depot and Merchants' Terminal Railway Company, the Taylor Avenue Railway Company, the Vandeventer Avenue Railroad Company, the Missouri Railroad Company, the Forest Park, Laclede and Fourth Street Railway Company and the Delmar and Clayton Railway Company, all of which lines were constructed under authority of Ordinances duly enacted; and by Ordinance 19,429, approved October 28th, 1898, the Lindell Railway Company, its lessees, successors and assigns, were authorized to extend its lines over other streets, and operate same as extended, and to acquire the properties, rights, privileges and franchises, in so far as the same could be conveyed to it, which said ordinance is as follows:

159 (19,429.)

"An ordinance to authorize the Lindell Railway Company, its lessees, successors and assigns, to extend its railroad by constructing, maintaining and operating railroad tracks over and along certain streets, alleys and city blocks, and to connect its tracks at certain points with the tracks respectively, of the Compton Heights, Union Depot and Merchants' Terminal Railroad Company, the Taylor Avenue Railway Company, the Vandeventer Avenue Railroad Company, the Missouri Railroad Company, and the Forest Park, Laclede and Fourth Street Railway Company, and the Delmar Avenue and Clayton Railway Company, and to acquire or lease from said last named companies the railroad tracks, equipment and property now owned by them respectively, together with the several rights, privileges and franchises heretofore granted to them by the City of St. Louis; also, to authorize said companies to transfer the same, and the Lindell Railway Company thereafter to use, maintain and operate the same, together with all rights and franchises heretofore and by this ordinance granted to it by the City of St. Louis, by any motive power, except steam engines running in the streets, for and during a period extending to December thirty-first, nineteen hundred and forty-two.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby granted the Lindell Railway Company, its lessees, successors and assigns, to extend, construct, maintain and operate railroad tracks on and along the streets, alleys, city blocks, and private property, as follows, viz.:

SEC. 2. Beginning at the point of connection with the tracks of the Lindell Railway Company, at the intersection of De Baliviere avenue and De Giverville avenue; thence with a double track along De Giverville avenue to and into Union boulevard; thence
160 northwardly with a double twin track, along Union boulevard, the rails of which shall be laid alternately inside and outside of the double tracks of the St. Louis and Suburban Railway Company, as now laid in Union boulevard, at a distance of not to exceed six inches therefrom, or use the tracks of the St. Louis and Suburban Railway Company, as now laid along Union boulevard, from De Giverville avenue to its intersection with McPherson avenue; thence eastwardly with a double track along McPherson avenue to King's Highway boulevard; thence northwardly with a double track to McPherson avenue; thence eastwardly along McPherson avenue with a double track to Walton avenue; thence northwardly along Walton avenue to a connection with the Lindell Railway Company's tracks at Delmar avenue.

And from a connection with the tracks herein authorized to be laid, at the intersection of Walton avenue and Olive street; thence with a double track eastwardly along Olive street from Walton

avenue to a connection with the tracks of the Missouri Railroad Company in Olive street, east of Boyle avenue.

And from a connection with the tracks of the Lindell Railway Company in Taylor avenue, north of Delmar avenue; thence southwardly with a double track along Taylor avenue to a connection with the tracks herein authorized to be laid at the intersection of Taylor avenue and Olive street.

Also, with a single track connection from the south track, as now laid in Olive street, west of Fourth street, to a connection with the west track of the People's Railway Company laid on Fourth street; thence along and over said west track of the People's Railway Company to Chestnut street, to a connection with the track, as now laid, of the Forest Park, Laclede and Fourth Street Railway Company; thence westwardly along said track to a connection with the track of the Missouri Railroad Company on Chestnut street, at the intersection of Sixth street, and from a connection with the
161 track of the Missouri Railroad Company, as now laid in Chestnut street, with a single track, to and into Thirteenth street to a connection with the track of the Forest Park, Laclede and Fourth Street Railway Company, and northwardly over and along said track to Olive street to a connection with the north track of the Missouri Railroad Company in Olive street, west of Thirteenth street.

Also, beginning at Harney avenue, where the same intersects Kingshighway boulevard; thence northwestwardly along Harney avenue, with a single track, to and into Bernays avenue; thence northeastwardly along Bernays avenue, with a twin track, the rails of which shall be laid within and without the space between the rails of the St. Louis and Suburban Railway Company's track, to Florissant avenue; thence westwardly with a double track along Florissant avenue, and over the tracks of the Benton-Bellefontaine Railroad Company, so far as laid, to the city limits; thence southeastwardly along the south side of Florissant avenue, with a single track, to and into Kingshighway boulevard; thence southwardly, with a single track, along Kingshighway boulevard to Harney avenue; thence southwardly with a double track, along Kingshighway boulevard to Spalding avenue, to a connection with the tracks of the Taylor Avenue Railroad Company in Spalding avenue, east of Kingshighway boulevard.

Also, with a double track from a connection with the tracks of the Missouri Railroad Company, at the intersection of the Old Manchester road and the Missouri Pacific Railway Company's tracks; thence southwestwardly along and over the Old Manchester road and across the tracks of the St. Louis and San Francisco Railroad Company, and the track or tracks of the Missouri Pacific Railway Company; thence in the southwestwardly direction along the Old Manchester road to Kingshighway boulevard; thence southwardly, with a double twin track, the rails of which shall be laid alternately inside and outside of the rails of the double tracks of the
162 Kingshighway Railroad Company, on Kingshighway, between Old Manchester road and Magnolia avenue, a dis-

tance of not to exceed six inches therefrom, on Kingshighway boulevard to Magnolia avenue; thence eastwardly along Magnolia avenue, with a double track, or over any street car tracks that may be laid thereon, to Thurman boulevard, to a connection with the tracks of the Compton Heights, Union Depot and Merchants' Terminal Railroad Company at the intersection of Thurman boulevard and Magnolia avenue.

Also, beginning at the point of connection with the tracks of the Compton Heights, Union Depot and Merchants' Terminal Railroad Company's tracks at Vandeventer avenue and McRee avenue; thence with a double track westwardly along McRee avenue to and into Old Manchester road at the point of intersection with the tracks hereinbefore authorized in said Old Manchester road.

Also, from a connection with the tracks of the Lindell Railway Company, as now laid in Washington avenue, at the intersection of Nineteenth street; thence southwardly along Nineteenth street, with a double track, to a connection with the track of the Forest Park, Laclede and Fourth Street Railway Company, and the track of the Missouri Railroad Company on Market street at the intersection of Nineteenth street.

Also, beginning at the intersection of the tracks of the Forest Park, Laclede and Fourth Street Railway Company at Laclede avenue, where the same intersects Channing avenue; thence northwardly, with a double track, along Channing avenue to and into Cook avenue; thence westwardly with a double track along Cook avenue to and into Prairie avenue; thence northwardly with a double track along Prairie avenue to and into Evans avenue; thence westwardly with a double track along Evans avenue to and into Taylor avenue, to a connection with the tracks of the Taylor Avenue Railway Company.

Also, along Plymouth avenue from the intersection of the
163 Lindell Railway Company's track on Plymouth avenue, east of Hamilton avenue, westwardly along Plymouth avenue to Hodiamont avenue; also, with a single track on Etzel avenue from a connection with the Lindell Railway Company's track on Etzel avenue, east of Hamilton avenue; thence westwardly with a single track to Hodiamont avenue and with a single track to Hodiamont avenue, northwardly from Etzel avenue to Plymouth avenue, and with a double track on Hodiamont avenue from Plymouth avenue to Page boulevard and with a double track on Page boulevard from Hodiamont avenue, westwardly along Page boulevard to the city limits.

And beginning at the intersection of Hodiamont avenue and Page boulevard from a connection with the tracks herein authorized to be constructed; thence northwardly along Hodiamont avenue, with a double track, to Easton avenue; thence westwardly on Easton avenue, with a double track, to the city limits. The north track of said Lindell Railway Company, on Easton avenue, to cross the south track of the Citizens' Railway Company, on Easton avenue, and the south track of said Lindell Railway Company on Easton avenue to be a twin track, the rails of which shall be laid alternately inside

and outside of the rails of the south track of the Citizens' Railway Company, on Easton avenue, between Hodiamont avenue and the city limits.

Also with authority to remove the single track of said Lindell Railway Company on Hamilton avenue, between Etzel avenue and Plymouth avenue to the west of the center line of said Hamilton avenue between Etzel avenue and Plymouth avenue; and with authority to construct an additional track on Hamilton avenue between Plymouth avenue and Etzel avenue.

Also from a connection with the double tracks herein authorized to be laid on Hamilton avenue, at the intersection of Etzel avenue; thence southwardly along Hamilton avenue, with a double track, to and into Delmar boulevard to a connection with the track
164 of the Delmar avenue and Clayton Railway Company, in Delmar avenue, or to a connection with the double tracks of the Delmar Avenue and Clayton Railway Company, authorized to be constructed in Delmar boulevard, from De Baliviere avenue to the city limits.

Also beginning at the intersection of Delmar boulevard and Skinker road, from a point of connection with the tracks authorized to be constructed by the Delmar Avenue and Clayton Railway Company; thence southwardly with a double track, along the Skinker road to a connection with the track or tracks of the Clayton and Forest Park Railroad Company; thence over and along the track or tracks of the Clayton and Forest Park Railroad Company, as now authorized on Skinker road, and with authority to construct an additional track east of and parallel with said track of the Clayton and Forest Park Railroad Company, to a point in the Skinker road east of and opposite to the right of way of the Clayton and Forest Park Railroad Company, near the north line of the property of Thomas K. Skinker; and thence westwardly to and into said right of way of the Clayton and Forest Park Railroad Company, to the city limits.

Also beginning at a point of connection with the tracks of the Lindell Railway Company at the intersection of Clayton avenue and McCausland road; thence, with a double track, southwardly along McCausland road to and into Wise avenue, and thence westwardly along Wise avenue to the city limits.

Also commencing at a point in the Old Manchester road, at the city limits; thence eastwardly with a double track along the Old Manchester road to Hewitt avenue; thence northwardly along and across Hewitt avenue, and all intervening streets, alleys and city blocks, with a double track, and across the New Manchester road and the tracks of the St. Louis and Meramec River Railroad Company, to and into the first public street running northwardly from the New Manchester road, east of the city limits and known as
165 Vine avenue or Blendon place; thence northwardly along said street to the city limits.

Also with authority to construct a double track on Market street from a point of connection with the tracks of the Missouri Railroad Company and the Forest Park, Laclede and Fourth Street Railway Company on Market street west of Seventeenth street, to a point of

connection with the double tracks of the Missouri Railroad Company, its successors or assigns, on Market street east of Sixth street, with authority to remove the present track on Market street, between Seventeenth street and Sixth street, to a point north or south of the center line of Market street to form one of said double tracks.

Also with a connection from the south track of the Missouri Railroad Company, at the intersection of Broadway, to and into the west track of the St. Louis Railroad Company, in Broadway; thence southwardly over and along said west track of the St. Louis Railroad Company, to Walnut street, or with authority to construct an additional track, the rails of which shall be laid alternately inside and outside of the rails of the west track of the St. Louis Railroad Company at a distance of not to exceed 6 inches therefrom, on Broadway between Market street and Walnut street; thence eastwardly, with a single track, along Walnut street, to a connection with the east track of the People's Railway Company; thence northwardly over and along said east track of the People's Railway Company to Washington avenue, with authority to connect with the tracks of the Missouri Railroad Company on Market street, west of Fourth street; and the track of the Forest Park, Laclede and Fourth Street Railway Company in Chestnut street west of Fourth street, and to a connection with the tracks of the Lindell Railway Company, as now laid on Washington avenue, or with authority to make connection with and use the track of the St. Louis and Suburban and St. Louis and Meramec River Railroad Companies, on Fourth street between Walnut street and Locust street; provided, said track is laid;
166 otherwise the said Lindell Railway Company shall have the right to lay a temporary single track on Fourth street between Walnut street and Washington avenue east of and as near as practicable to the east track of the People's Railway Company. The east rail of said temporary track to be distant at least ten feet from the east curb of the street, and to maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Company have been so reconstructed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said Lindell Railway Company upon the east track thereof, as provided above in this section, between Walnut street and Washington avenue. The said company shall be required, and it hereby agrees, to remove such temporary track and restore the street to its former condition to the satisfaction of the Board of Public Improvements, whenever the tracks of the Peoples' Railway Company are reconstructed as above provided, and said company is able to begin the operations of its cars on the east track thereof.

With authority to construct a single temporary track from a connection with the tracks of the St. Louis and Suburban Railway Company and the St. Louis and Meramec River Railroad Company south of Locust street northwardly to a connection with the tracks of the Lindell Railway Company in Washington avenue, the east rail of said temporary track to be not less than ten feet distant from the east curb of Fourth street.

Also northwardly along Pope avenue, from the intersection of Newstead and Carter avenues with a double track to Florissant avenue.

And said Lindell Railway Company is authorized to construct and operate the tracks aforesaid on, over and across all railroad tracks, streets, alleys or city blocks located on the route or routes hereinbefore described. Contemporaneously with the laying of the tracks upon McPherson avenue, between Kingshighway and Union
167 Boulevard, herein authorized, the railway company shall widen the surface of the street on either side of such width as may be directed by the Board of Public Improvements, and improve the extended surfaceway of the street with the same material as that with which the present surface of the street is made, and in a manner acceptable to the Board of Public Improvements.

The work of constructing the roadbed and the laying of the tracks shall be done under the supervision of, and to the satisfaction of, the Board of Public Improvements, which board shall also have the power of approving or disapproving the character of the rails and other fixtures proposed to be used.

SEC. 3. Said Lindell Railway Company, its successors or assigns, are hereby authorized and empowered to operate the lines of railroad described in Section Two of this ordinance, and all of the various lines of railroad of the respective companies, their successors and assigns, which it is hereby authorized to acquire; by overhead wire or wires, supported by iron poles, through overhead or underground trolley and feed wires, and such supplementary ground circuits as may be necessary to protect the water pipes of the city from electric action without making any connections with the said water pipes; the wires on said poles to be not less than twenty feet above the surface of the street; said poles to be placed along the curbs of the streets wherever practicable, and when impracticable, as may be directed by the Board of Public Improvements at such distance apart as may be necessary for the safe and proper operation of said railroads; or by storage battery on its cars, or by underground wires in conduits, or by any motive power, except steam engines, running in the streets; and they may erect and use all necessary wires and poles for the purpose of connecting the wires on said lines with the power house and depots or stations of said company now or hereafter to be erected, and with intersecting and contiguous railroads.

168 SEC. 4. The rate of speed at which cars may be run on the lines of road hereinbefore specified, on and east of Grand avenue shall not exceed ten miles per hour. And on the lines west of Grand avenue shall not exceed fifteen miles per hour.

Cars shall be run over the said lines of railroad hereinbefore specified, every day in the year during the continuance of the franchise granted by this ordinance, between the hours of five-thirty o'clock a. m. and seven o'clock p. m., at intervals of not more than ten minutes; and between eight p. m. and midnight, at intervals of not more than fifteen minutes; and between midnight and five-thirty a. m., at intervals of not more than one hour.

SEC. 5. The construction of the lines of railroad hereinbefore authorized shall commence within six months after this ordinance is approved, and shall be fully completed before the first day of January, Nineteen Hundred and Two, and if any portion thereof be not then completed, the right herein granted to complete such portion shall thereupon be forfeited and annulled; excepting, however, as to such portions thereof as are authorized to be constructed upon streets which may hereafter be opened, which shall be constructed when the same are opened, or unless prevented by litigation or legal process. And for the purpose of constructing and completing said lines of railroad, said Railway Company is hereby authorizezd to cross over and upon all other intersecting streets, alleys, avenues, highways and railroad tracks wherever constructed across the route of said lines and to make all necessary excavations in the public streets upon which said lines are hereinbefore authorized to be constructed, and when said tracks and poles are completed, said streets shall be restored to their original condition to the satisfaction of the Street Commissioner. Said Railway Company, its successors or assigns, shall cause the grade of the roadbed and tracks authorized by this ordinance to conform to the now or hereafter established grades of the streets on which said tracks are constructed;
169 and whenever said streets, or any of them, or any portion thereof adjacent to said tracks, shall be constructed, repaired or reconstructed, said Railway Company, its successors or assigns, upon being notified by the Street Commissioner so to do, shall cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of such street is constructed, repaired or reconstructed. Before laying said tracks upon any ungraded street the said company shall cause such streets wherever such tracks are laid to be graded from curb to cub and to the approval of the Board of Public Improvements.

SEC. 6. Said Lindell Railway Company, its successors and assigns, are hereby authorized and empowered to acquire or lease of the Compton Heights, Union Depot and Merchants' Terminal Railroad Company, the Taylor Avenue Railway Company, the Vandeventer Avenue Railroad Company, the Missouri Railroad Company, and the Forest Park, Laclede and Fourth street Railway Company, and the Delmar Avenue and Clayton Railway Company, and said companies are hereby severally authorized and empowered to sell and transfer or lease to said Lindell Railway Company, upon such price and terms as they may mutually agree, all and singular the several lines of railroad and properties now owned or operated by said companies respectively, together with all rights, privileges and franchises which have heretofore been granted to said companies, or either of them, by the City of St. Louis, and which are now in force; and upon such transfer being made, said Lindell Railway Company, its successors and assigns, shall possess, exercise and enjoy the said rights, privileges and franchises so transferred, and also the rights, privileges and franchises granted to the said Lindell Railway Company by the City of St. Louis, and now in force, including such as are conferred by

this ordinance, and shall thereafter maintain and operate the
170 lines of railroad so acquired as one entire system for and during a period ending the thirty-first day of December, Nineteen Hundred and Forty-two, to which last mentioned date all said rights, privileges and franchises, in the event said transfers are made, are hereby extended; provided, however, and the powers and privileges above mentioned are granted upon the following considerations, terms, conditions and agreements, viz.:

(First.) The transfers aforesaid to said Lindell Railway Company by said other companies, shall be made prior to the first day of July, Nineteen Hundred.

(Second.) Said Lindell Railway Company shall, in lieu of all payments now required of it under any and all previous ordinances, and such as is now or may by ordinances hereafter passed be required of any railway company whose tracks and property it is hereby authorized to acquire, on the first days of January and July, in the years eighteen hundred and ninety-nine and nineteen hundred, pay to the City of St. Louis the sum of seven thousand dollars; and thereafter the said Lindell Railway Company shall, on said first day of January, in the year nineteen hundred and one, and on the first day of July of said year, and on the first days of January and July of each year thereafter until the first day of January in the year nineteen hundred and six, pay into the treasury of the City of St. Louis the sum of fourteen thousand dollars, and on the first day- of January and July in the year nineteen hundred and six, and on the same days in each year thereafter, until and including the first day of January in the year nineteen hundred and fourteen, the sum of sixteen thousand dollars; and on the first day of January in the year nineteen hundred and fifteen, and on the same day in each year thereafter, until and including the first day of January in the year nineteen hundred and twenty-four, a sum equal to three per cent. of the gross earnings of said company during the preceding year; and on the first day of January in the year nineteen hundred and twenty-five,
171 and on the same day of each year thereafter, until and including the first day of January in the year nineteen hundred and thirty-three, a sum equal to three and one-half per cent. of the gross earnings of said company during the preceding year; and on the first day of January in the year nineteen hundred and thirty-four, and on the same day in each year thereafter until and including the first day of January in the year nineteen hundred and forty-two, the said Lindell Railway Company shall pay into the City Treasury a sum equal to four per cent. of the gross earnings of the said company for the preceding year, and shall on the thirty-first day of December, nineteen hundred and forty-two, pay an additional sum equal to four per cent. of gross earnings for the year nineteen hundred and forty-two; which said several sums, said Lindell Railway Company, its successors and assigns, in consideration of the rights and privileges granted by this ordinance, hereby agree to pay to the City of St. Louis at the times they respectively shall become due and payable as herein provided. And said company shall file with the Comptroller of the City of St. Louis on the first day of January in

each year beginning with the year nineteen hundred and fifteen, a full and complete statement of the gross earnings of said railway company, and of any other company or companies which it may lease or acquire for the preceding year, subscribed and sworn to by its president and secretary.

In case of default in the making of any of the payments herein provided for, should such default continue for a period of thirty days, the City of St. Louis shall have the right, through the action of the Mayor and Comptroller, to declare a forfeiture of all the rights, privileges and franchises herein created; and thereupon such declaration having been made, said rights, privileges and franchises shall at once cease and terminate.

(Third.) After the transfers aforesaid are made, said Lindell Railway Company, its successors or assigns, shall have the right
172 to connect any of such lines so acquired, or now owned by it, including such as are authorized in section two of this ordinance, wherever the same may cross each other, by constructing such curved tracks as may be required in order to run the cars from the tracks from any one of said lines over and along the tracks of the other; and in addition to passenger cars, may run over and upon any of said lines ambulance, funeral and United States mail cars, and cars for the transportation of household supplies, excepting coal. Provided, however, household supplies shall not be transported east of Vandeventer avenue on any division of said company north of the Missouri Pacific Railroad and east of Eighteenth street on any division of said company south of the tracks of the Missouri Pacific Railroad Company.

(Fourth.) The rate of fare for a single continuous passage, one way, over either of said lines of railroad, when acquired and operated by the Lindell Railway Company, as aforesaid, may be five cents for adults and two and one-half cents for children under the age of twleve years and over three years; and said Lindell Railway Company shall issue to passengers, as they approach the following intersecting streets, who have paid regular fare, and who may request the same, one transfer ticket entitling such passenger to an immediate and continuous passage from the point where the transfer is made over any one branch of the Lindell Railway Company, viz.:

Vandeventer avenue and Laclede avenue; Vandeventer avenue and Olive street; Vandeventer avenue and Finney Avenue; Vandeventer avenue and Evans avenue; Taylor avenue and Evans avenue; Taylor avenue and Finney avenue; Euclid avenue and Delmar boulevard; Euclid avenue and McPherson avenue; Euclid avenue and Maryland avenue; Euclid avenue and Laclede avenue; Kingshighway boulevard and Chouteau avenue; Park avenue and Vandeventer avenue; Chouteau avenue and Vandeventer avenue; Eighteenth street and Market street; Eighteenth street and Olive street; Eight-
173 eenth street and Washington avenue; Delmar boulevard and Taylor avenue; Channing avenue and Lucas avenue; Channing avenue and Olive street, and Channing avenue and Laclede avenue.

SEC. 7. Within ninety days after the approval of this ordinance,

and before the same shall become effective, and before availing itself of the rights and privileges granted by this ordinance, said Lindell Railway Company shall file with the City Register its written acceptance of all the conditions herein, and shall at the same time file with said Register its bond in the sum of fifty thousand dollars with two or more satisfactory sureties to be approved by the Mayor and Council, conditioned to hold the City of St. Louis harmless from any and all damages to accrue to the city by reason of the failure of said Lindell Railway Company to comply with all the terms and conditions of this ordinance, and all general ordinances now in force or that may hereafter be passed in reference to street railways.

Approved October 28, 1898."

That the conditions provided for in said ordinance were duly complied with.

That by deed dated September 19th, 1899, said Lindell Railway Company conveyed all its property, rights, privileges and franchises, so far as it could in law convey the same, to the United Railways Company.

That on September 30th, 1899, the United Railways Company leased said rights, privileges and franchises to the St. Louis Transit Company for a term ending April 1st, 1939; that said lines have been operated and maintained continuously by the companies owning same, and continuously since the date of last mentioned ordinance by the Lindell Railway Company and its successors,
174 the United Railways Company and the St. Louis Transit Company, and all the conditions of said ordinance have been kept and the payments therein required made when due respectively.

(15) And among the lines of street railway in the said city owned by the said United Railways Company, and operated by the St. Louis Transit Company, are the lines formerly known as the St. Louis Railroad, the construction of which was begun under Ordinance 4371, approved March 10, 1859, which is as follows:

(4371.)

"An ordinance authorizing the St. Louis Railroad Company to construct their roads along certain streets in the City of St. Louis.

Be it ordained by the City Council of the City of St. Louis:

SECTION 1. That Hudson E. Bridge, D. A. January, John How, Christian Crone, Alexander Peterson, Robert A. Barnes, James H. Lucas, Antoine Wiseman, William M. McPherson, Frederick Meyer, George R. Taylor and their associates, under the name and style of the St. Louis Railroad Company, be and they are hereby authorized to construct, maintain and operate their railroad, to be worked by horse power only, from the northern limits of the city at its intersection with the Bellefontaine road, southwardly along the line of and through said road and Broadway, with a double track to O'Fallon street, thence with a single track out O'Fallon street to Sixth street, thence through Sixth street to Chouteau avenue, thence along

Chouteau avenue west to Seventh street, thence down Seventh street to Carondelet avenue, thence with a double track to the southern city limits; also with single track from Broadway at O'Fallon street down Fifth street and Carondelet avenue to the intersection of said avenue with Seventh street.

175 SEC. 2. The said railway shall be constructed with a double or single track, as herein specified, of iron rails, the center line of which shall coincide as nearly as may be with the center lines of the avenues and streets on which such track may be laid, unless permitted to be otherwise located at any point by the City Engineer with the approval of the City Council.

SEC. 3. The tracks of said railway shall be laid on a grade even with the grade of the streets through which it may pass, and the space between the tracks and between the rails and a space of at least two feet outside of the rails shall be well paved with stone on edge, and shall at all times be kept in good order and repair by said company so as not to obstruct the passing, crossing or traveling of said avenues and streets by other vehicles. And the macadamizing removed from such streets or portions thereof as are paved by said company, shall be placed on the side of said track as may be directed by the City Engineer, the cost of same to be paid by said company. And the track of said road shall be five feet six inches wide from outside to outside, so that other vehicles of ordinary width can run on said track, and the City Council hereby reserves the privilege of repealing this ordinance and annulling all privileges herein granted at any time when in the opinion of the City Council said road shall not be kept in good order and repair, and when also a sufficient number of cars shall not be kept running on said road to answer the wants of the people.

SEC. 4. The said railway and its appurtenances shall be maintained in good order and repair by said company, and be operated at all reasonable times for the use of the public, and each passenger may be required to pay a fare not exceeding five cents for transportation from any one point on said line to any other point.

SEC. 5. The stables, sheds and houses, and other necessary appurtenances of said railway shall not be erected upon any
176 street or sidewalk of the city, nor shall any cars be permitted to stand at any point in any street or avenue, excepting at the point of starting, for any length of time exceeding two minutes.

SEC. 6. Said company shall pay such license as may be prescribed by ordinance, and be subject to taxes and assessments on all property belonging to them, in like manner as other persons or corporations.

SEC. 7. Said company shall be required to complete said road to Arsenal street within twelve months from and after the approval of this ordinance, and to the southern limits within twelve months from the completion of the grade of the street south of Arsenal street; provided, if Carondelet avenue be not graded in compliance with the grade established south of Sidney street, then said company is hereby authorized to lay a track on Sidney street from Carondelet avenue to Seventh street; thence to Arsenal street a double

track; it is further provided that whenever said Carondelet avenue shall be graded, said company shall discontinue the use of Sidney street and one track on Seventh street, and continue said track down Carondelet avenue to Arsenal street; otherwise this ordinance shall be null and void.

SEC. 8. The City of St. Louis reserves the right to take up or remove the rails of said company whenever it shall be necessary for the repair or improvement of the streets, or for the laying of water or gas pipes, or sewers, or for other public purposes on the streets on which such rails may be laid, and such repairs or improvements shall be made by the city, and without unnecessary delay, and the track shall be taken up and relaid by the company at their own proper cost and expense.

SEC. 9. A majority of the directors of said company shall at all times be *bona fide* citizens of St. Louis, and in default of this requirement, the privileges herein granted shall be forfeited.

SEC. 10. Such company shall file with the City Register
177 within thirty days from the date of the approval of this ordinance, their acceptance of its provisions; and shall at the same time enter into bond with the City of St. Louis for the sum of Fifty Thousand Dollars, with sufficient security, to be approved by the Mayor, conditioned that said company will complete said railway within the time allowed them by section seven of this ordinance, and in case of failure or neglect so to do, that said bond be declared forfeited; and also in case of a failure of said company to file their acceptance or enter into bond with the city as above required and within the time above specified, then and in that case this ordinance shall be null and void; and provided further, that in case said company shall not commence the construction of the road within thirty days from the filing of the aforesaid bond, or acceptance of the provisions of this ordinance, then this ordinance shall be null and void.

SEC. 11. All buildings, sheds or stables erected by said company shall in all respects conform to existing City Ordinances.

SEC. 12. Said railroad company shall not, by any possible construction of this ordinance, be permitted to carry freight on said railroad line hereby established, under penalty of a forfeiture of the rights granted by this ordinance, and further, the penal sum of one hundred dollars for each load or parcel of freight transported on said railroad.

SEC. 13. Said company shall connect their road by one or more tracks with the Fair Grounds within one year after a route shall be designated by the City Council, and in the event that such connection shall not be thus made, the company shall forfeit all right to make such connection hereafter, said company shall cause crosswalks to be made in the middle of each block on the line of said company at their own cost, and shall keep the same in good repair.

SEC. 14. This company shall not be permitted to make half or partial trips, but shall run their cars from five o'clock a. m.
178 until twelve o'clock p. m., so the cars shall pass any given point on said road at intervals not exceeding ten minutes

from five o'clock a. m. to eight o'clock p. m., during the summer; and from six o'clock a. m. to eight o'clock p. m. during the winter; and from eight o'clock p. m. to twelve o'clock p. m., at intervals not exceeding fifteen minutes.

SEC. 15. Said company shall make an exhibit to the City Comptroller of their condition on the first Monday of Janua[illegible] of each and every year during the existence of this ordinance, setting forth an accurate account of all the receipts and expenditures of the preceding year, all indebtedness of said company, to whom owing and whatever moneys may be due or owing to said company, said exhibit to be published in some newspaper printed in the City of St. Louis.

SEC. 16. The City of St. Louis reserves the right to construct railways upon such streets or avenues as may cross any of the streets or avenues upon which the St. Louis Railroad Company are authorized by this ordinance to build their railroad.

SEC. 17. The said St. Louis Railroad Company shall in all cases be legally and individually liable for all injuries or damages resulting to any person, or the property of any person, through carelessness or negligence of any person having control of said road, or that may be employed in any capacity in the management of said road by said company; and provided further, that should said company hereafter obtain a charter from the Legislature of this State exempting them from any of the requirements of this ordinance or releasing them from any liabilities that may attach to said company without such charter, then in that case this ordinance shall be null and void.

SEC. 18. This ordinance shall be and remain in force for twenty-five years from and after its approval.

179 SEC. 19. All ordinances or parts of ordinances conflicting with this ordinance are hereby repealed.

Approved March 10, 1859."

That thereafter extensions were made as per Ordinances 12,477, approved March 27, 1883, and 14,182, approved August 2, 1887, which are as follows, to-wit:

12,477.)

"An ordinance authorizing the St. Louis Railroad Company to maintain and operate its railroad and to have an extension of its rights and franchises.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis Railroad Company, as organized under the laws of this state, its successors or assigns, is hereby permitted and empowered to maintain its road and operate its cars along and upon the streets and avenues of the city now occupied by it, as follows: Beginning on the Bellefontaine road near Grand avenue, thence southward on said road and Broadway, with a double track to O'Fallon street, thence southward with a double track on Fifth

street to Elm street, thence westwardly on Elm street with a single track to Seventh street, thence southwardly on Seventh street with a single track to Carondelet avenue, thence with a double track southwardly on Carondelet avenue to Keokuk street; also with a single track from the intersection of Seventh street and Carondelet avenue, northwardly on Carondelet avenue and Fifth street to Elm street; provided, however, that the tracks of the said company at the intersection of Keokuk street and Jefferson avenue be removed from their present location and placed in the center of Jefferson avenue.

SEC. 2. All rails hereafter laid by said company shall be of steel or iron of not less than five inches width, the inside flange thereof being not less than two and one-half inches wide. No rail shall hereafter be laid that has a flange on both sides.

180 SEC. 3. In consideration of the rights and privileges granted by this ordinance to the St. Louis Railroad Company, its successors and assigns, said company agrees to and will pay to the City of St. Louis on the first days of January and July in each year, beginning with the first day of January, A. D. 1884, to and including the year 1903, the sum of twenty-five hundred dollars, and for each and every year after the year 1903, and until the expiration of the time for which the rights hereby granted are continued by this ordinance, the sum of four thousand dollars, on the first days of January and July in each of said years, which shall be in addition to all taxes as now or hereafter prescribed by law. This ordinance shall be and remain in force and effect for the term of thirty years from and after its approval, but a failure on the part of said company or its successors or assigns, to pay any instalment aforesaid within sixty days after the same becomes due and payable shall render this ordinance void, and all the rights and franchises hereby granted, confirmed and extended to the St. Louis Railroad Company shall revert to the City of St. Louis.

SEC. 4. The St. Louis Railroad Company shall not be entitled to any of the rights and franchises granted by this ordinance unless within thirty days from the approval thereof it file with the City Register its written acceptance of the terms and conditions of said ordinance, and also its penal bond in the sum of twenty thousand dollars, payable to the City of St. Louis, to be approved by the Mayor and Council, conditioned that said St. Louis Railroad Company shall and will perform and comply with all the terms and conditions of this ordinance.

SEC. 5. It is expressly understood that by the acceptance of the provisions of this ordinance by the St. Louis Railroad Company said company waive all rights it may have to streets within three blocks of this railway claimed under the act of the General Assembly, approved January 16, 1860, and that it will conform to any ordinance now existing or hereafter passed enforcing article 10 of the

181 City Charter, not inconsistent with the provisions of this ordinance.

SEC. 6. The track or tracks hereinbefore mentioned shall be made to conform to the grade which the city may establish, and shall be

laid along the center line of the streets before designated. The St. Louis Railroad Company shall keep the streets between the tracks and between the rails of said tracks in good repair, and to the extent of twelve inches outside of each rail in as good repair with the same or better material as the adjacent parts of the streets and as nearly on a level with such rails as practicable, except that the space between the rails and betwen the tracks at the curve and crosstracks shall be paved with stone or wooden blocks, or some other material equally as good, and to the satisfaction of the Street Commissioner. Said company shall also pave with stone or wood blocks that portion of Carondelet avenue from the north line of Wyoming street to the south line of its stable, and that lies west of their railroad track, and that portion of Seventh street between the north line of Wyoming street and the south line of its stable and east of its railroad tracks; also that portion of Jefferson avenue, to the extent of ten feet, surrounding its switch track at its terminus at Keokuk street. The above paving shall be done within ninety days after the acceptance of this ordinance. In order to insure a faithful compliance with the provisions of this ordinance relative to the repairs of streets, tracks and curves, the said St. Louis Railroad Company shall be required to pay into the City Treasury within ten days after the acceptance of this ordinance the sum of two hundred dollars as a special fund for the purpose of defraying the cost of making such repairs by the Street Commissioner as the said company may be liable to make under the provisions of this ordinance and fail to make, and which, in the opinion of the Street Commissioner, may be necessary to be done; provided, that notice shall be first sent by the Street Commissioner to said company to make such repairs, said notice to
182 specify the time in which such repairs shall be done. Whenever there shall be a deficit in the deposit above mentioned, in consequence of a part or the whole of said deposit having been used for repairs by the Street Commissioner as herein provided, the Street Commissioner shall notify said company in writing that such deficiency exists, and a failure to make such deficiency good within ten days after such notice shall have been given, shall be considered a misdemeanor, and on conviction thereof, before either of the Police Justices, said company shall be fined in a sum not less than twenty dollars for each and every day said deficiency exists after the expiration of the ten days in the notice last above mentioned.

SEC. 7. The first car starting from the north terminus and south terminus shall be a smoking car, and thereafter during the day and night every third car shall be a smoking car, except open cars, when smoking will be allowed on the rear seats designated by the railroad company. There shall be placed in a conspicuous place in plain letters "smoking car," either painted on the car or a sign attached to the car. Non-smoking cars shall have in plain letters "no smoking" marked or painted on them. Every car upon this line shall have a front and rear platform and be drawn by no less than two animals, and each car shall have a driver and conductor between Salisbury and Wyoming street.

SEC. 8. Said St. Louis Railroad Company shall keep on hand for

sale, and shall sell to any person, passenger tickets, in packages of five for twenty-five cents, and in packages of twenty for one dollar, and also tickets for children under twelve years old in packages of ten for twenty-five cents. Said tickets shall be kept for sale by the conductor of each car and by the persons in charge of the car on those portions of the road lying north of Salisbury street and south of Wyoming street, and also at the office of the company during business hours. The holder of any ticket thus issued shall be
183 entitled for the same to one transportation over the line of said road and said railroad company shall be bound to exchange and redeem from any other street railroad that issue similar tickets. The fare for adults shall not be more than five cents.

SEC. 9. Whenever the City of St. Louis shall reconstruct any street or part of street over which the St. Louis Railroad Company is herein authorized to operate its railroad, the said railroad company shall, at the same time, under the direction of the Street Commissioner of the City of St. Louis, reconstruct the street between its rails and tracks, and for twelve inches outside each rail, of the same material or better material, satisfactory to the Street Commissioner, and corresponding in surface grade with the street or parts of streets so reconstructed; and it shall be the duty of the said Street Commissioner to notify, in writing, the said railroad company of the purpose of the city to reconstruct said streets, the material to be used, and the time in which said railroad company shall make the required change, and in the event the said railroad company shall fail to make such changes in the street between its rails and tracks and for twelve inches outside each rail within the time designated by the Street Commissioner therefor, then and in that event the Street Commissioner shall cause all such repairs to be done, and shall certify to the City Collector the entire cost of all such repairs so done by the Street Commissioner as a bill of costs due and payable to the City of St. Louis from said railroad company, which said bill of costs shall be paid by the said railroad company upon presentation. For each day said railroad company shall be in default in payment of said bill of costs after such presentation the City Collector shall add thereto the sum of five dollars as a penalty for such default, to be paid by said railroad company; if said railroad company shall fail to pay such bill of costs and all penalties thereto added, for the period of three months from the date of the first presentation of the same to
184 the said company for payment, then and in that event said default shall work a forfeiture of all the rights, franchises and privileges of said railroad company under this ordinance.

Approved March 27, 1883."

(14,182.)

"An ordinance amendatory of section 3 of ordinance number 12,477, entitled 'an ordinance authorizing the St. Louis Railroad Company to maintain and operate its railroad and to have an extension of its rights and franchises.'

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Whereas, The St. Louis Railroad Company, by reason of the great length of its line, will be obliged to incur extraordinary expense in the reconstruction of the streets, and in the change of its motive power for the further accommodation of the public, for which said company will be obliged to increase its capital stock and issue a large bonded indebtedness, which can be disposed of to better advantage, and its burdens lessened if the term of its franchise be extended, therefore section 3, of ordinance number 12,477, approved March 27, 1883, is hereby amended so as to read as follows:

SEC. 3. In consideration of the rights and privileges granted by this ordinance to the St. Louis Railroad Company, its successors and assigns, said company agrees to and shall pay into the Treasury of the City of St. Louis, on the first days of July and January in each year, beginning with the first day of July, A. D. 1887, to and including the year A. D. 1903, the sum of 2,500 dollars, and for each and every year after the year A. D. 1903, on the first days of July and January in each year, until the expiration of the time for which the rights and privileges are hereby granted by this ordinance, the sum of five thousand dollars, which amounts of money shall be in addition to all taxes as now or that shall hereafter be
185 prescribed by law. This ordinance shall be and remain in force and effect for the term of fifty years from and after the date of its approval. Any failure on the part of said company, or its successors or assigns, to pay any installment of money herein provided to be paid into the Treasury of the City of St. Louis within sixty days after the same becomes due and payable shall render this ordinance null and void.

SEC. 4. This ordinance shall be null and void unless the said St. Louis Railroad Company shall, within thirty days after the approval thereof by the Mayor of the City of St. Louis, file with the City Register its acceptance of the terms and conditions thereof.

Approved August 2, 1887."

Said ordinances and amendments were accepted by the St. Louis Railroad Company for itself, successors and assigns and conditions therein complied with.

That by deed dated April 1, 1901, the said United Railways Company acquired all the property, rights and franchises of the St. Louis Railroad Company, in so far as the same could by said Company be conveyed to it by deed, and that said United Railways Company has leased the same to the St. Louis Transit Company until

April 1, 1939, and said lines are now operated and have been continuously by said companies, assigns and successors.

That all conditions of said ordinances have been kept by said companies, and all payments required have been made.

(16) And amongst the lines of street railways in said city owned by the said United Railways Company and operated by the St. Louis Transit Company are lines formerly known as the
186 People's Railway Company, originally constructed under authority of ordinances duly enacted.

Thereafter said lines were extended as per Ordinance 17,196, approved April 8, 1893, which ordinance is as follows, to-wit:

(17,196.)

"An ordinance to amend ordinance numbered eleven thousand nine hundred and fifty-six, approved March eighteenth, eighteen hundred and eighty-two, entitled 'An ordinance authorizing the People's Railway Company to extend its tracks, maintain and operate its present routes in connection therewith, and to have an extension of its rights and franchises,' by striking out the words 'thirty years' in section four, and inserting in lieu thereof the words 'fifty years;' and also to amend an ordinance numbered fourteen thousand four hundred and eighty-seven, which became a law on the fourteenth day of April, eighteen hundred and eighty-eight entitled 'An ordinance authorizing the People's Railway Company to alter and extend its railroad over certain streets, and change its motive power,' by striking out the figures 'nineteen hundred and twelve,' in the third section of said ordinance, and inserting in lieu thereof, in said section, the figures 'nineteen hundred and thirty-two.'

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Section four of ordinance eleven thousand nine hundred and fifty-six, approved March eighteenth, eighteen hundred and eighty-two, entitled 'An ordinance authorizing the People's Railway Company to extend its tracks, maintain and operate its present routes in connection therewith, and to have an extension of its rights and franchises,' is hereby amended by striking out the words 'thirty years' and inserting in lieu thereof, the words 'fifty years,' so that said section as amended shall read as follows, viz:

187 'SECTION 4. In consideration of the rights and privileges granted by this ordinance to the People's Railway Company, said company agrees to and will pay to the City of St. Louis on the first days of January and July in each year from and after the first day of January, A. D. eighteen hundred and eighty-three, to and including the year eighteen hundred and eighty-nine, the sum of fifteen hundred dollars, and for the years eighteen hundred and ninety to eighteen hundred and ninety-five, both inclusive, the sum of two thousand dollars on the first days of January and July

in each of said years, and for each and every year after eighteen hundred and ninety-five, and until the expiration of the time for which the rights hereby granted are continued by this ordinance, the sum of twenty-five hundred dollars on the first days of January and July in each of said years, which shall be in addition to all taxes as now or hereafter prescribed by law. This ordinance shall be and remain in force and effect for the term of fifty years from and after its approval, but a failure on the part of said company, or its successors or assigns, to pay any installment aforesaid, within sixty days after the same becomes due and payable, shall render this ordinance void, and all the rights and franchises hereby granted, confirmed and extended to the People's Railway Company, shall revert to the City of St. Louis.'

SEC. 2. Section 3 of ordinance fourteen thousand four hundred and eighty-seven entitled 'An ordinance authorizing the People's Railway Company to alter and extend its railroad over certain streets, and change its motive power,' and which became a law on the fourteenth day of April, eighteen hundred and eighty-eight, is hereby amended by striking out the figures 'nineteen hundred and twelve,' in the third section of said ordinance, and inserting, in lieu thereof, in said section, 'nineteen hundred and thirty-two,' so that said section as amended shall read as follows, viz.:

188 'SEC. 3. If in any alteration or change in its said railroad, or in the adoption of such cable or electric power, any damage or injury shall result to any of the public or private sewers, or water pipes, or gas pipes, the said company shall pay the same. And any necessary change in the location of the water pipe, or gas pipe, or sewers, laid or built in the streets used by said railway company, shall be made by said company at its own cost and expense, and all such work shall be done under the supervision and to the satisfaction of the Board of Public Improvements; provided, however, that all the rights, privileges and franchises granted by this ordinance shall cease and expire on the eighteenth day of March, nineteen hundred and thirty-two.'

Approved April 8th, 1893."

That thereafter, on April 1, 1901, the said United Railways Company, by purchase and by deed of conveyance, duly acquired the property, rights, privileges and franchises of the People's Railway Company, in so far as the same could be conveyed to it by deed from said People's Railway Company, including the right to maintain and operate said lines, which have been continuously maintained and operated since the same were constructed by the People's Railway Company, its successors and assigns; and all the conditions of the aforementioned ordinance have been kept by the said companies and by the United Railways Company and the St. Louis Transit Company, and all the payments required by said ordinance to be made by them have been made as the same became due respectively.

(17) Amongst the lines of street railways owned by the said United Railways Company and operated by the St. Louis Transit

Company are the lines formerly known as the Union Depot
189 Railroad Company, originally constructed by the Gravois Railroad Company, whose rights, under authority of the ordinances of the City of St. Louis, were acquired by the Union Depot Railroad Company, and which lines were subsequently extended by the Union Depot Railroad Company.

And thereafter the said lines were extended as per Ordinance 17,021, which said ordinance is as follows, to-wit:

(17,021.)

"An ordinance to authorize the Union Depot Railroad Company to extend its railroad by changing its tracks in certain streets, and by additional construction in certain streets, and by acquiring the transfer to it by the Mound City Street Railway Company and by the Benton-Bellefontaine Railway Company of their respective railroad tracks, rights, privileges and franchises, and to authorize the last named companies, respectively, to make such transfers to said Union Depot Railroad Company.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Union Depot Railroad Company, its successors and assigns, are hereby authorized and granted the right to extend its railroad and to operate and maintain such extension in connection with its present railroad, as follows: Beginning at the intersection of Meramec street and Virginia avenue and continuing its double tracks (now in Meramec street) from the intersection of Meramec street and Virginia avenue south in Virginia avenue to its intersection with Compton avenue; thence south in Compton avenue, with a double track, to the Wilmington road; thence south in Virginia avenue, with a single track, to Primm street; thence east in Primm street, with a double track, to Michigan avenue; thence north in Michigan avenue, with a single track, to the Wilmington
190 road; thence west in the Wilmington road, with a single track, to Compton avenue, and a connection with the double track of said road in said avenue.

Also beginning at the intersection of Twelfth street and Clark avenue; thence west, with double tracks, in Clark avenue to Eighteenth street; thence south in Eighteenth street, with double tracks, and upon and across the Eighteenth street bridge to Singleton street; thence, with single track, in Eighteenth street to Papin street; thence east in Papin street, with single track, to Seventeenth street; also with a single track in Singleton street from Eighteenth street to Seventeenth street; thence in Seventeenth street, with a single track, to Papin street; thence with twin tracks in Seventeenth street southwardly to the alley parallel to and between Papin street and Chouteau avenue; thence, with double tracks, across the southwest corner of city block four hundred and fifty-four, to and across Chouteau avenue into Grattan street; thence, with double tracks, in Grattan street to Lafayette avenue.

Also from the intersection of Geyer avenue and Mississippi avenue, and connecting with the single track of said road, south with a single track in Mississippi avenue to Gravois avenue and a connection with the single track of said road in said Gravois avenue; also from the intersection of Second Carondelet avenue and Singleton street and continuing the present single track in said avenue into and across Sidney street, south in Second Carondelet avenue, with a single track, to Crittenden street; thence west in Crittenden street, with a single track, to Lemp avenue; thence south in Lemp avenue, with a double track, to Cherokee street; thence west in Cherokee street, with a double track, to Gravois avenue; thence southwest in Gravois avenue, with a double track, to a point three hundred feet west of the west line of Grand avenue. Also a single track connecting with the aforesaid single track in Sidney street; thence south, with a single track, in Cambria street to Lynch street; thence west
191 in Lynch street, with a single track, to Lemp avenue; thence south in Lemp avenue to Crittenden street and a junction with the double track in Crittenden street. And said company is also authorized and empowered to take up and remove one of its tracks now laid in Lafayette and Mississippi avenues from Second Carondelet avenue to Geyer avenue, and to move its remaining track to the center of said portions of Lafayette and Mississippi avenues; and also to lay a single track in Geyer avenue from Mississippi avenue to Second Carondelet avenue, and connecting with its single track in Second Carondelet avenue.

Also beginning at the said intersection of Eighteenth street and Clark avenue; thence north, with double tracks, in Eighteenth street to O'Fallon street; thence west in O'Fallon street to Hogan street; thence north in Hogan street to Madison street; thence west in Madison street to Twenty-fifth street; thence north in Twenty-fifth street to Hebert street; thence west in Hebert street to Prairie avenue.

It is understood and accepted by the Union Depot Railroad Company that this ordinance does not give to said railroad company any right or privilege to lay any track or tracks on Eighteenth street between Washington avenue and Chouteau avenue, but that said Union Depot Railroad Company shall operate its cars over the tracks of the Compton Heights, Union Depot and Merchants' Terminal Railroad Company, as stipulated and provided by the ordinance granting said Compton Heights, Union Depot and Merchants' Terminal Railroad Company its franchise, it being understood that at no time shall there be more than two tracks on Eighteenth street between Washington avenue and Chouteau avenue.

SEC. 2. Said Union Depot Railroad Company, its successors and assigns, are hereby authorized and empowered to operate, in connection with the present railroad of said company, the extensions and changes in its railroads authorized by section one of this ordinance, by electric power to be carried on overhead wire or
192 wires, supported by iron poles, the wires on said poles to be not less than twenty feet above the surface of the streets, and placed along the curb of the streets at such intervals as may be necessary for the safe and proper operation of said railroad; with

the right also of connecting said overhead wires with the present overhead wires of said company, and also with the power house of said company.

SEC. 3. Said Union Depot Railroad Company may run its cars on the portion of the extensions of its railroad authorized by this ordinance, which lie north of Lafayette avenue and south of Cass avenue, at a rate of speed not greater than ten miles per hour, and on the portions of such extensions which lie in and south of Lafayette avenue and north of Cass avenue at a rate of speed not greater than fifteen miles per hour; and shall run its cars over said extensions of its railroad authorized by this ordinance every day in the year during the continuance of the franchise granted by this ordinance, between the hours of five-thirty o'clock a. m. and eight p. m., at intervals of not less than ten minutes, and from eight o'clock p. m. to midnight at intervals of not less than fifteen minutes, and from midnight until five-thirty a. m., at intervals not greater than one hour. And said company, its successors or assigns, shall commence the construction of the tracks authorized by this ordinance, within six months after the approval thereof, and complete such construction within eighteen months from the date of such approval.

SEC. 4. The rate of fare for a single continuous passage one way over the railroad of said Union Depot Railroad Company shall not be more than five cents for adults and two and one-half cents for children under the age of twelve years. But any passenger going north on the California avenue line of said Union Depot Railroad Company as far as Cherokee street, and who has already paid his fare, shall be entitled, without additional charge therefor, on reaching said Cherokee street, to transportation over the line,
193 either east or west at his election, of said company in Cherokee street; provided, however, that such transportation shall commence at the intersection of said California avenue and Cherokee street, and be taken on the first car on which such passenger can obtain passage from the point aforesaid. And any passenger going east on the Cherokee street line of said company as far as California avenue, and who has already paid his fare, shall be entitled, without additional charge therefor, on reaching California avenue, to transportation over the line, either north or south at his election, of said company in California avenue; provided, however, that such transportation shall commence at the intersection of said California avenue and Cherokee street and be taken on the first car on which such passenger can obtain passage from the point aforesaid. And any passenger going west on the Cherokee street line of said company as far as California avenue, and who has already paid his fare shall be entitled, without additional charge therefor, on reaching the said avenue to transportation over that portion of the California avenue line of said company, which lies south of Cherokee street; provided, however, that such transportation shall commence at the intersection of said Cherokee street and California avenue and be taken on the first car on which such passenger can obtain passage from the point aforesaid. And any passenger going north over the Eighteenth street bridge on said company's railroad and who has already paid

his fare, shall be entitled, without additional charge therefor, on reaching Clark avenue and Eighteenth street to transportation over the line of said company running north and west in said Eighteenth and other streets; provided, however, that such transportation shall commence at the intersection of Clark avenue and Eighteenth street and be taken on the first car of said company on which such passenger can obtain passage from the point of intersection aforesaid. And any passenger going south on said company's line in Eighteenth
194 street, and who has already paid his fare, shall be entitled, without additional charge therefor, on reaching Clark avenue to transportation over the line of said company, either, at his election south in Eighteenth and other streets or east in Clark avenue and other streets; provided, however, that such transportation shall commence at the intersection of Eighteenth street and Clark avenue and be taken on the first car of said company on which said passenger can obtain passage from the point of intersection aforesaid. And said company shall, at the request of any passenger embraced in this section, furnish the transportation hereinabove provided for.

SEC. 5. Whenever any part of the streets through which the extensions of the railroad of said Union Depot Railroad Company authorized by this ordinance runs shall be repaired or reconstructed, said company shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed, to the satisfaction of the Board of Public Improvements. And said company shall cause the grade of the roadbed and tracks authorized by this ordinance to conform to the grades now or hereafter established of the streets in which it constructs said extensions of its said railroad and at all points where said extensions of its said railroads cross any of the streets of the City of St. Louis. And the said railroad company shall, at its own cost and expense, grade all streets upon which said extensions of its tracks are laid for the full width of said streets from the building line to building line, and to the satisfaction of the Board of Public Improvements.

SEC. 6. The Mound City Street Railway Company is hereby authorized and empowered to transfer to said Union Depot Railroad Company, and said Union Depot Railroad Company is authorized
195 to acquire, upon such terms as to price as said companies may mutually agree, all and singular the railroad, and also the rights, privileges and franchises now in force which have been heretofore granted to or conferred upon said Mound City Street Railway Company by the City of St. Louis. And if said transfer is made, said Union Depot Railroad Company shall possess, exercise and enjoy said rights, privileges and franchises so transferred, and operate the said railroad acquired by it from said Mound City Street Railway Company. Provided, however, that this section of this ordinance shall become void unless the transfer hereinabove authorized is made within three years from the date of the approval of this ordinance.

Whenever the Union Depot Railroad Company shall acquire the

rights, privileges and franchises of the Mound City Street Railway Company, as provided above, then the said Union Depot Railroad Company shall issue to any passenger going north from Ninth and Pine streets or south from Twelfth and Pine streets over the line of its road, and who shall have paid his fare, a transfer ticket which shall entitle such passenger, without additional charge therefor, to an immediate and continuous passage on the first car passing the intersection of the tracks of the above mentioned roads at Twelfth and Pine streets and Ninth and Pine streets, to any other point on the line of said roads.

SEC. 7. The Benton-Bellefontaine Railway Company is hereby authorized and empowered to transfer to said Union Depot Railroad Company, and said Union Depot Railroad Company is authorized to acquire, upon such terms as to price as said companies may mutually agree, all and singular, the railroad, and also the rights, privileges and franchises now in force which have been heretofore granted to or conferred upon said Benton-Bellefontaine Railway Company by the City of St. Louis. And if said transfer is made, said Union Depot Railroad Company shall possess, exercise and enjoy said rights, privileges and franchises so transferred and operate the said rail-
196 road acquired by it from said Benton-Bellefontaine Railway Company. Provided, however, that this section of this ordinance shall become void unless the transfer hereinabove in this section authorized is made within three years from the date of the approval of this ordinance.

Whenever the Union Depot Railroad Company shall have acquired the railroad and the rights, privileges and franchises of the said Benton-Bellefontaine Railway Company, as above in this section provided, then the said Union Depot Railroad Company shall issue to any passenger going as far north on its present line of railroad as the intersection of Broadway and Washington avenue, and who desires to continue west and north on said Benton-Bellefontaine line, and who has already paid his fare, a transfer ticket, without additional charge therefor, entitling such passenger to transportation over said Benton-Bellefontaine line; provided, however, that such transportation over said last named line shall commence at the said intersection of Broadway and Washington avenue and be taken on the first car on which such passenger can obtain passage from said point. And to any passenger going as far south and east on said Benton-Bellefontaine line as the intersection of Washington avenue and Sixth street and who desires to continue south on said Union Depot Company's railroad, and who has paid his fare, the said Union Depot Railroad Company shall issue, without additional charge therefor, a transfer ticket entitling such passenger to transportation over any one of its lines of railroad running south which such passenger may select; provided, however, that such transportation shall commence at the said intersection of Washington avenue and Sixth street and be taken on the first car on the line selected by such passenger on which he can obtain passage.

SEC. 8. If the said Union Depot Railroad Company acquires the railroad tracks and the rights, privileges and franchises of said

Mound City Street Railway Company and of said Benton-Bellefontaine Railway Company, as provided in sections six and
197 seven of this ordinance, then the railroad tracks acquired from said Mound City Street Railway Company shall constiute and be known as the Mound City line of said Union Depot Railroad Company, and the railroad tracks acquired from said Benton-Bellefontaine Railway Company shall constitute and be known as the Bellefontaine line of said Union Depot Railroad Company. And the said Union Depot Railroad Company shall within twelve months after such acquisition aforesaid extend the double tracks in Grand avenue, now belonging to said Benton-Bellefontaine Railroad Company, south in Grand avenue from the north side of Harper street to the Natural Bridge road, and connect the same in Grand avenue with the double tracks in said avenue now belonging to said Mound City Street Railway Company. And upon the completion of the tracks and the connection above authorized, the said Union Depot Railroad Company shall issue to any passenger going as far west on said Mound City line as Grand avenue and who desires to continue north on said Bellefontaine line to Florissant avenue only, or to and westwardly on said last named avenue, and who has already paid his fare, a transfer ticket, without additional charge therefor, entitling such passenger to transportation over said portion, aforesaid, of said Bellefontaine line; provided, however, that such transportation over said portion, aforesaid, of said Bellefontaine line shall commence at the intersection of the Natural Bridge road and Grand avenue and be taken on the first car on which such passenger can obtain passage from that point. And to any passenger on said Bellefontaine line going as far south as said Natural Bridge road, over Florissant avenue and Grand avenue, or over Grand avenue only from or south of its intersection with Florissant avenue, and who desires to continue east and south over said Mound City line, and who has already paid his fare, said Union Depot Railroad Company shall issue, without additional charge therefor, to such passenger a transfer ticket, entitling him to trans-
198 portation over said Mound City line; provided, however, that such transportation shall commence at the intersection of the Natural Bridge road and Grand avenue and be taken on the first car of said Mound City line on which such passenger can obtain transportation.

SEC. 9. In consideration of the rights, powers, privileges and franchises granted and conferred by the provisions of this ordinance, the said Union Depot Railroad Company, its successors and assigns, shall pay into the City Treasury of the City of St. Louis the sum of one thousand dollars per annum on the first day of July, eighteen hundred and ninety-five, and a like sum on the first day of July of each year thereafter until and including the year eighteen hundred and ninety-nine; and the sum of two thousand dollars per annum on the first day of July of each year thereafter until and including the year nineteen hundred and four; and the sum of three thousand dollars per annum on the first day of July of each year thereafter until and including the year nineteen hundred and nine; and the sum of four

thousand dollars per annum on the first day of July of each year thereafter until and including the year nineteen hundred and fourteen; and the sum of five thousand dollars per annum on the first day of July of each year thereafter until and including the year nineteen hundred and twenty-six.

SEC. 10. Within ninety days after the approval of this ordinance and before availing itself of the rights and privileges granted by this ordinance, the Union Depot Railroad Company shall file with the City Register its written acceptance of all the conditions therein and shall at the same time file its penal bond in the sum of ten thousand dollars, with two or more sureties, conditioned to hold the City of St. Louis harmless from all damages that may accrue to the city by reason of the failure of said Union Depot Railroad Company to comply with all the terms and conditions of this ordinance
199 and all general ordinances now in force, or that may hereafter be passed, in reference to street railways, in so far as they may affect the franchise herein granted.

The City of St. Louis reserves the right to grant a franchise for the use of the tracks, poles and cross-wires from Washington avenue to Chouteau avenue on Eighteenth street, to any and all other street railroad companies, whenever authorized so to do by the Municipal Assembly, by ordinance duly enacted and approved.

The terms and conditions under which said tracks, poles and cross-wires may be used shall be as follows: Each railroad company using said tracks, poles and cross-wires shall pay annually to the Compton Heights, Union Depot and Merchants' Terminal Railroad Company its proportion of the cost and of maintenance of said tracks, poles and cross-wires.

SEC. 11. This ordinance shall continue in force for a period of thirty-four years from the date of its approval.

Approved January 11th, 1893."

And thereafter said Union Depot Railroad Company was authorized to extend its lines to other streets as per Ordinance 18,049, approved April 8, 1895, which ordinance is as follows, to-wit:

(18,049.)

"An ordinance authorizing the Union Depot Railroad Company to occupy and use certain streets, and to operate its line of railroad thereon, and prescribing the conditions thereof.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Union Depot Railroad Company, its successors and assigns, is hereby authorized to extend its double tracks from Kingshighway west in Arsenal street to Sulphur avenue; thence north in Sulphur avenue to the Old Manchester road; thence
200 northwestwardly in the Old Manchester road to Columbia avenue; thence west in Columbia avenue to Tamm avenue, with the right to construct at Tamm avenue a suitable turntable,

or switches, or both; also to construct double tracks from the center of the Old Manchester road at a point opposite the Watson road; thence southwestwardly on the Watson road to a point opposite Scanian avenue; thence westwardly on Scanlan avenue to McCausland avenue; thence westwardly over private property to the city limits, with the right to cross intervening streets and alleys. And said Union Depot Railroad Company shall, when required by the Mayor, build switches into the ground of the various city eleemosynary institutions, located along its route, and operate an ambulance car or cars thereto; the cost of such cars and the price to be paid by the city for such service to be agreed upon between the said railroad company on the one part, and the Mayor and the Comptroller, on behalf of the city, on the other.

SEC. 2. Said railroad company, its successors and assigns, may operate said extensions in connection with its existing lines, along the route authorized herein, by electric power, either by storage batteries, or other electrical devices carried on the cars, underground wires, or other instruments in conducts, or by overhead wires; and, for that purpose, said company may, from time to time, make all needful changes in the construction of its road, including curves, turnouts, switches, cross tracks, connections with its car sheds and power house, and erection of poles. Said poles shall be of iron and of the same design now used by said company, and placed along the curb lines of streets twenty feet in height above the street to carry overhead wires, or whatever else may be necessary and convenient to carry said motive power into practical effect upon or along the streets and places where said extensions are authorized to be constructed under this ordinance. The location of the poles and tracks shall be submitted to the Board of Public Im-
201 provements for their approval, and shall be placed where designated by said Board, and such poles and tracks shall at any time thereafter be moved at the expense of said railroad company to such other portions of the streets occupied by them as the said Board may by order direct. Any failure on the part of the company to obey any order made or ordinance passed pursuant to this section shall render this franchise null and void.

SEC. 3. On the extensions of the line granted by this ordinance cars shall be run at intervals not greater than fifteen minutes between six o'clock in the morning and eleven o'clock at night.

SEC. 4. Said Union Depot Railroad Company may run its cars on said extensions at a rate of speed not greater than fifteen miles an hour.

SEC. 5. The rights, privileges and franchises hereby granted shall continue and be in full force and effect until the franchise of the Tower Grove branch of the Union Depot Railroad Company shall expire by the lapse of time.

SEC. 6. Within thirty days after the signing of this bill by the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall execute its bond to the City of St. Louis in the penal sum of ten thousand dollars, with at least two securities, to be approved by the Mayor and City Council,

conditioned that it will save the city harmless on account of all damages that may be sustained by the city or by any person or persons, firm or corporation during the construction of said extension, or on account of the building of such road; and conditioned further, that said company will faithfully comply with all the conditions of this ordinance. Said bond shall be renewed from time to time, whenever requested by the Mayor, and any failure to renew the same when so required shall work a forfeiture of this franchise.

SEC. 7. The portions of the streets disturbed by the construction of said road shall be restored by said company at its own cost
202 and expense, and to the satisfaction of the Street Commission. The tracks shall, at all times, be upon such grade, and upon such portions of the streets as shall have been approved and directed by the Board of Public Improvements, and any changes of grade or location required by such Board shall be made by said company, when and as directed by said Board, at the cost and expense of said company. If any street or portion of a street is not graded, the said railroad company shall, at its own cost and expense, grade the same, for the full width of said street from curb to curb, to the satisfaction of the Board of Public Improvements, whenever the grade of such street is established. Whenever the tracks of such road are laid upon a street whose grade has been established, said company shall cause the spaces between its tracks and for two feet outside thereof to be improved, and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever any such street is improved or paved, such spaces between its rails and one foot outside thereof shall be improved and kept improved by said company, with the same material and in like manner as the remaining portion of such street. And at all times, and on all streets, said tracks shall be so constructed and the said spaces between same, and outside same, so improved, and so kept improved, as to not interfere with or obstruct travel over and along such tracks by teams and vehicles.

SEC. 8. The work authorized by this ordinance shall be completed and the road put in operation, as far as the Poorhouse, within six months after the date of the acceptance of this ordinance, and from the Poorhouse to Clifton Heights within twelve months thereafter, and when the Watson road from the point of intersection of Old Manchester road with the Watson road to a point opposite Scanlan avenue, Scanlan avenue, from said point to McCausland avenue, shall be graded, then that part of the road shall be completed within
six months after said streets are graded; provided, however,
203 that the right to construct and operate said last named portion of said road shall be forfeited if said road is not constructed upon said Watson road and Scanlan avenue within three years from the passage of this ordinance, and on the remainder of the route the work shall be completed and the road be in operation within two years after such date, and unless this section is complied with this ordinance shall become null and void and all rights granted under the same shall cease and be forever forfeited by said company.

SEC. 9. In consideration of the rights and franchises granted by this ordinance the said company shall be required and agrees to pay into the City Treasury on the first day of January, nineteen hundred, the sum of one thousand dollars, and a like sum on the first day of January each year thereafer until and including the year nineteen hundred ten. And the sum of two thousand dollars on the first day of January, nineteen hundred eleven, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred twenty, and the sum of three thousand dollars on the first day of January, nineteen hundred twenty-one, and a like sum on the first day of January each year thereafter until the expiration of this franchise; such compensation to be in addition to all other taxes, assessments or sums that the said company may be now, or at any time hereafter, liable for to the City of St. Louis.

SEC. 10. This ordinance is accepted with the understanding that said company shall be subject to all laws which are now, or may be hereafter in force, regarding street railways in this city. Any failure on the part of said company, its successors or assigns, to comply with any or all of the conditions and requirements of this ordinance shall work a forfeiture of all rights granted by the same and shall constitute a breach of said bond.

Approved April 8th, 1895.

Said Union Depot Railroad Company accepted said ordinance for itself, its successors and assigns.

204 That on the 19th day of September, 1899, the said United Railways Company by deed duly executed acquired all the property, rights, franchises and privileges of the said Union Depot Railroad Company, in so far as it could acquire the same by conveyance from said last named company, and said United Railways Company leased the same to the St. Louis Transit Company for a term ending April 1, 1939.

That said lines of railway have been operated continuously since by the respective parties owning the same, and their successors, and that all the payments in said ordinances provided to be made have been made by the said Union Depot Railroad Company and the United Railways Company and the St. Louis Transit Company as the same became due.

(18) Amongst the lines of railways in said city owned by the said United Railways Company and operated by the St. Louis Transit Company are the lines formerly known as the Grand Avenue Railway, constructed by the Grand Avenue Railway Company under authority of Ordinance 17,047, approved February 17, 1893, which said ordinance is as follows, to-wit:

(17,047.)

"An ordinance authorizing the Grand Avenue Railway Company to construct, operate and maintain a double track passenger railroad on, along and across certain streets, avenues, highways and city blocks in the City of St. Louis, and to operate its line of railroad by electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto the Grand Avenue Railway Company, a corporation organized under the laws of the State of Missouri, its successors and assigns, to lay down, construct, operate and maintain a double track passenger railway, on, over and along the route prescribed in section two of this ordinance, over and across all streets, alleys, avenues, highways, bridges and city blocks, and other places crossed or intersected by said route, together with all necessary switches, curves and sidings' connection with its power houses, spurs and turn outs.

SEC. 2. The railroad authorized by section one of this ordinance shall begin on Grand avenue at or near its intersection with Twentieth street, with a single loop track around the water tower; thence in a southerly direction over and upon the double track of the Benton-Bellefontaine Railway Company on Grand avenue to Harper street; thence in a southerly direction, with a double track, along and upon Grand avenue to, and connecting with the tracks of the Citizens' Railway Company at the intersection of Grand avenue and Natural Bridge road; thence in a southerly direction over and upon the double track of the Citizens' Railway Company on Grand avenue to Easton avenue, provided that if the said Citizens' Railway Company has only a single track between the Natural Bridge road and Palm street on Grand avenue, and does not construct an additional track so as to make its line a double track line between Natural Bridge road and Palm street, then the said Grand Avenue Railway Company, its successors or assigns, shall have and is hereby granted the right to build said additional track between said last named points; thence in a southerly direction, with a double track, along and upon Grand avenue to, and connecting with, the tracks of the Lindell Railway Company at the intersection of Grand and Finney avenues; thence in a southerly direction over and upon the double track of the Lindell Railway Company on Grand avenue to Lucas avenue; thence in a southerly direction, with a double track, along
206 and upon Grand avenue and over and across the Grand avenue bridge with one track upon each side of he roadway of the said bridge, and upon Grand avenue to, and connecting with, the tracks of the Peoples' Railway Company at the intersection of Grand and Lafayette avenues; thence in a southerly direction over and upon the double track of the People's Railway Company on Grand avenue to a point opposite the east entrance to Tower Grove Park; thence in a southerly direction, with a double track, along

and upon Grand avenue to Meramec street; thence in an easterly direction, with a double track, on Meramec street to Virginia avenue; thence in a southerly direction, with a double track, on Virginia avenue and intervening ground to Wilmington road or Kansas street; thence in a southerly direction, with a single track, on Virginia avenue to Primm street; thence in a westerly direction, with a single track, on Primm street to Sixth street; and thence in a northerly direction, with a single track, on Sixth street to the Wilmington road or Kansas street, thence in an easterly direction on the Wilmington road or Kansas street to Virginia avenue.

And he said Grand Avenue Railway Company, its successors or assigns, may also construct, maintain and operate all curves, switches, sidings and connections, and may make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

SEC. 3. Said Grand Avenue Railway Company, its successors and assigns, may operate its railroad along the route authorized herein by electricity, either by storage battery, the conduit underground, or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles shall be erected along the curbs of all streets, and the wires or other appliances necessary or convenient in the use of electricity as a motive
207 power, may be erected and placed either between the tracks of said railroad or along the curbs of all streets on, over, across or along which said railroad may at any time or place be operated, under this ordinance; said wires to be not less than twenty feet above the surface of the streets, the poles to be of iron, and of such form and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said Grand Avenue Railway Company, its successors or assigns, shall have the right to make all needful and convenient changes from time to time by the construction and erection of all needful and convenient curves, trenches, excavations, sewer connections, machinery, poles and wires, in any of the streets or highways, in, along, over or across which its railroad may be constructed, maintained or operated; provided that said work shall be done in accordance with plans approved by the Board of Public Improvements.

The City of St. Louis reserves the right to grant a franchise for the use of the tracks, poles and cross-wires on the Grand avenue bridge, to any and all other street railroad companies, whenever authorized so to do by the Municipal Assembly by ordinance duly enacted and approved. The terms and conditions under which said tracks, poles and crosswires may be used, shall be as follows: Each railroad company using said tracks, poles and crosswires, shall pay to the Grand Avenue Railway Company its proportion of the cost and maintenance of said tracks, poles and crosswires.

Said railway company shall cause the grade of its roadbed and

tracks to conform to the now or hereafter established grades of the streets over which it constructs its railroad, and at all points where said railroad crosses any of the streets of the City of St. Louis. Said railway company shall, at its own cost and expense, grade all ungraded streets upon which said tracks are to be laid, for the full width of said streets from curb to curb, and to the satisfaction of the Board of Public Improvements.

208 SEC. 4. Said Grand Avenue Railway Company, its successors or assigns, shall commence the work of construction of that portion of its railroad on Grand avenue north of Arsenal street from Twentieth street to Arsenal street, within six months after the acceptance of this ordinance, and have said work completed, and have said portion of its railroad authorized herein in operation in the transportation of passengers in cars within eighteen months thereafter; and said Grand Avenue Railway Company, its successors or assigns, shall commence the work of construction of that portion of its railroad south of Arsenal street within one year after the acceptance of this ordinance and complete and operate the same within two years after the acceptance of this ordinance; provided, that in case any street over which the said railroad is to run, under the provisions of this ordinance, is not opened within said two years said railway company shall not be required to build its railroad over such street until such street is duly and legally opened to public use; and in any event said railway company, its successors or assigns, shall have a reasonable time within which to complete its said railroad upon such street, after such street may have become duly and legally opened to public use.

And should said Grand Avenue Railway Company, its successors or assigns, be restrained at any time before or during the construction of its railroad by any legal process, the time actually lost in construction thereby shall be added to the time authorized herein for the completion of said railroad.

From and after the respective completion of said respective portions of its railroad, as hereinbefore prescribed, said Grand Avenue Railway Company, its successors and assigns, shall run passenger cars over said portions of its railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes, and from twelve o'clock midnight to six o'clock a. m. at intervals not greater than one hour.

209 Said Grand Avenue Railway Company, its successors, or assigns, may run its cars on its said railroad between Twentieth street and Easton avenue at a rate of speed not to exceed ten miles an hour, and from Easton avenue to the south side of the bridge at a rate of speed not to exceed six miles per hour, and from the south side of the bridge to Arsenal street at a rate of speed not to exceed ten miles per hour, and from Arsenal street to its southern terminus at a rate of speed not to exceed fifteen miles an hour.

The temporary suspension or the temporary use of horse power in drawing the cars in the event of the derangement of the ma-

chinery, or other extraordinary emergency, shall not be deemed a violation of this ordinance.

The fare from any point on said railroad to any other point on said railroad, as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons over four and under twelve years of age, and not exceed five cents for persons twelve years of age and over for a continuous passage one way. Children's tickets shall be sold by the conductor, two for five cents.

SEC. 5. Within sixty days from the approval of this ordinance, said Grand Aveune Railway Company shall file with the City Register its written acceptance thereof, and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more securities, to be approved by the Mayor and Council, conditioned that said railway company shall observe all the terms and conditions of this ordinance, and all general ordinances now in force, or that may hereafter be passed in reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs, by reason of the construction, operation or maintenance of said railroad, which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond shall be demanded and given, and approved by the
210 Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be cancelled and returned to the makers and the new bond filed with the Register of the City.

And in addition to the above bond, said railway company shall deposit with the City Treasurer the sum of four thousand dollars as security, that it will, within the respective time, designateed in section four of this ordinance, in good faith begin the work herein provided to be done, and that it will complete said work within the respective time designated by said section four; and unless the said company shall file its written acceptance of the provisions of this ordinance, deposit the above amount and commence the work as herein provided, the rights and privileges herein granted by the provisions of this ordinance shall cease and become void, and the money deposited shall thereupon absolutely become the property of the City of St. Louis, and no claim shall hereafter be made or allowed to refund the same or any part thereof.

SEC. 6. Said Grand Avenue Railway Company, its successors or assigns, shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail in good repair as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of material equal to or better than that of the street over which it runs or crosses, and between the rails of the same, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall, by ordinance, direct the repairing or reconstruction of said street; and provided further, that at all switches and railway crossings, the space between the rails, and one foot outside of the rails, shall be paved with granite, and maintained and repaired with granite, to the satisfaction of the Street Commissioner.

SEC. 7. In consideration of the rights and privileges
211 granted by this ordinance, said Grand Avenue Railway Company, its successors or assigns, shall pay into the City Treasury of the City of St. Louis annually, beginning with the first day of January, eighteen hundred and ninety-five, the sum of one thousand dollars per annum for the first five years, and the sum of two thousand dollars per annum for the second period of five years, and the sum of four thousand dollars per annum for the then next succeeding ten years, and the sum of five thousand dollars per annum for the then next succeeding ten years, and the sum of six thousand dollars per annum for the remainder of the life of this franchise.

SEC. 8. This ordinance and all the rights, privileges and franchises hereby granted, shall continue in force for the term of forty years from the date of the approval of this ordinance.

Approved February 17th, 1893."

That on the 19th of September, 1899, by deed duly executed, the United Railways Company acquired all the property, rights, franchises and privileges of the said Grand Avenue Railway Company (including the right to maintain and operate its lines), in so far as the said Grand Avenue Company could convey the same by its deed. That on the 30th of September, 1899, said United Railways Company leased the same to the St. Louis Transit Company for a term ending April 1, 1939. That said roads have been operated by the respective owners, assigns and lessees thereof and have made all the payments by the said ordinances required as the same became due.

(19) Amongst the lines of street railways in said city owned by the said United Railways Company and operated by the St. Louis Transit Company are the lines formerly known as the Jefferson Avenue Railway, constructed under authority of Ordinances
212 duly enacted in that behalf, by the Jefferson Avenue Railroad Company.

That said Company was authorized to change its motive power to electricity by authority of Ordinance 18,047, approved April 4, 1895, providing also for certain payments into the city treasury, which said ordinance and the terms thereof is as follows, to-wit:

(18,047.)

"An ordinance authorizing the Jefferson Avenue Railroad Company to operate its railroad by electricity, and to amend ordinance number eleven thousand eight hundred sixty-seven, entitled 'An ordinance authorizing the Jefferson Avenue Railroad Company to construct their road along certain streets in the City of St. Louis,' approved February sixth, eighteen hundred eighty-two.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Jefferson Avenue Railroad Company, its successors and assigns, may hereafter operate its line of railroad by electricity, supplied by storage batteries, or by conduit underground, or

carried on overhead wires supported by iron poles, the wires on said poles to be not less than twenty feet above the surface of the street, placed along the curbs of the streets at such distances and in such manner as may be approved by the Board of Public Improvements. And said company shall have the right to make all such changes and alterations in its railroad as may be necessary to effect such change in its motive power, including the right to erect and maintain its wires to and from any power house used by it. And the changes authorized by this ordinance in the said railroad and in the motive power thereof shall be fully completed within twelve months after the approval of this ordinance, and said road shall be in operation to the Fair Grounds within said time, but may be operated over
213 the tracks of some connecting railroad from St. Louis avenue to the Fair Grounds until the streets over which it is authorized to run north of St. Louis avenue have been opened and improved, and within twelve months thereafter said road shall be completed and in operation from St. Louis avenue to the Fair Grounds. The general plan, character and location of the poles, overhead wires and the proposed safeguards, including guard wires, with a view especially to safety to life and property, shall be submitted to and approved by the Board of Public Improvements, and all work shall be done under the supervision and to the satisfaction of said Board.

SEC. 2. Section five of the ordinance numbered eleven thousand eight hundred sixty-seven, and entitled, "An ordinance authorizing the Jefferson Avenue Railroad Company to construct their road along certain streets in the City of St. Louis," approved February sixth, eighteen hundred eighty-two, is hereby amended, by striking out all of said section, and inserting in lieu thereof the following, so that said section as amended shall read as follows, viz:

SEC. 5. Said Jefferson Avenue Railroad Company shall run its cars at a rate of speed not greater than ten miles per hour, and shall run its cars from Geyer avenue to the Fair Grounds every day in the year during the continuance of the franchise granted by this ordinance, between the hours of five-thirty o'clock a. m. and eight o'clock p. m., at intervals of not greater than five minutes, and from eight o'clock p. m. to midnight at intervals of not greater than ten minutes, and from midnight until five-thirty a. m. at intervals not greater than one hour.

The rate of fare for a single continuous passage one way over the road of said Jefferson Avenue Railroad Company shall not be more than five cents for adults, and two and one-half cents for children over four and under the age of twelve years. Children's tickets shall be kept for sale by the conductors on each car, two tickets for five cents.

214 SEC. 3. Section seven of the ordinance numbered eleven thousand eight hundred sixty-seven, and entitled, "An ordinance authorizing the Jefferson Avenue Railroad Company to construct their road along certain streets in the City of St. Louis," approved February sixth, eighteen hundred eighty-two, is hereby amended by striking out all of said section, and inserting in lieu

thereof the following, so that said section as amended shall read as follows, viz.:

SEC. 7. In consideration of the rights and franchises hereby granted to the Jefferson Avenue Railroad Company, its successors and assigns, there shall be filed with the Comptroller, on the first day of January in each year, on and after January first, eighteen hundred and ninety-seven, a statement of the gross earnings of said railroad company for the twelve months next preceding, subscribed and sworn to by its President and Secretary, and there shall be paid by said company to the Treasurer of the City of St. Louis, within ten days after each and every such annual statement, two per cent. of the gross amount of said earnings for the said period of twelve months, if they exceed seventy-five thousand dollars, and do not exceed one hundred and twenty-five thousand dollars; and two and one-half per cent. if they exceed one hundred and twenty-five thousand dollars, and do not exceed one hundred and fifty thousand dollars, and three per cent. if they exceed one hundred and fifty thousand dollars, which shall be in addition to all other taxes as now or hereafter prescribed by law and the failure on the part of said company, or its successors or assigns, to file said annual statement, and to pay the foresaid tax on its gross receipts, within thirty days after the same become due and payable, shall work a forfeiture of the franchise granted by this ordinance. The Municipal Assembly or the Comptroller of the City of St. Louis, shall have the right at any time to examine the books and papers of the company for the purpose of ascertaining the gross earnings of the company.

SEC. 4. The Jefferson Avenue Railroad Company shall, within sixty days after the approval of this ordinance file in the office of the City Register its written acceptance of the provisions hereof; and shall also at the same time file its bond, in the penal sum of twenty thousand dollars, conditioned that said company shall indemnify and save the City of St. Louis harmless from all damages to persons or property caused by said company during the making of the changes and alterations in its railroad authorized by this ordinance. And a failure of said company to file said written acceptance and said bond within the period above limited by this section shall work a forfeiture of all rights under this ordinance.

It is expressly understood that by the acceptance of the provisions of this ordinance by the Jefferson Avenue Railroad Company, said company agrees to conform to all present and future charter provisions of the City of St. Louis, and to all general ordinances now existing, or hereafter to be enacted, respecting and governing street railroads.

Approved April 4th, 1895."

That said Company accepted said ordinance, constructed and maintained and operated its lines in accordance therewith and has made all payments by the said ordinance required to be made.

That on the 19th day of September, 1899, by deed duly executed the United Railways Company acquired all the property, rights, franchises and privileges from said Jefferson Avenue Railroad Com-

pany, including the right to maintain and operate said lines of street railways, in so far as said Jefferson Avenue Railroad Company could convey the same to said United Railways Company by deed.

That on the 30th day of September, 1899, said United Railways Company leased the same to the St. Louis Transit Company
216 for a period ending April 1, 1939. That said Jefferson Avenue Railroad Company, the United Railways Company and the St. Louis Transit Company operated and maintained said lines in accordance with the provisions of the above mentioned ordinances and have made all payments in said ordinance required as the same became due.

(19*a*) That the charge on each car of one mill per pay passenger imposed by Ordinance 21,087 will approximately equal two per cent. of the gross earnings of the complainants.

(19*b*) That the City of St. Louis, by and through its proper officers, demands, under the authority of the said Ordinance 21,087, that the complainants herein pay to the said City of St. Louis on each car operated a sum equal to one mill for each revenue or pay passenger carried thereon.

(19*c*) That the City of St. Louis claims that the said charge of one mill for each revenue or pay passenger, provided for and imposed by said Ordinance 21,087, is required to be paid by the complainants in addition to the several sums and percentages on the gross receipts provided to be paid under the several ordinances granting to the United Railways Company of St. Louis and the St. Louis Transit Company, and their predecessors in right and title, the right to construct, maintain and operate their lines of street railway in the said City of St. Louis.

(20) That Ordinance No. 19,352, enacted April 13, 1898, referred to in Clause 17 of the complaint, is as follows:

217 (19,352.)

"An ordinance authorizing the Central Traction Company of St. Louis to construct, operate and maintain a single and double track passenger railroad on, over and along and across certain streets, avenues, highways, railways, bridges and city blocks in the City of St. Louis, and to operate its line of railroad by electric power, and to run over the tracks of other roads, and to acquire and convey by lease, purchase or sale its own property and franchises or the property and franchises of other street railway companies in the City of St. Louis, and to operate same.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority is hereby given and granted unto the Central Traction Company of St. Louis, incorporated under the laws of the State of Missouri, its successors or assigns, to lay down, construct, operate and maintain a single and double track street railway on, over and along the route as described in section two of this ordinance, on, over and across all railroad tracks, streets, al-

leys, highways, bridges and city blocks and other places along said route hereinafter mentioned, together with all necessary switches, curves and sidings, connections with its power houses, spurs and turnouts, and all necessary conduits, wires and poles for the purpose of connecting its power houses with lines of railway; and to cross any railway tracks in the line of its route, and to make such amicable running arrangements as they may be able to do with such railway companies whose tracks they may intersect or cross, and connect with and run on such tracks, and for that purpose, if necessary, to sell, lease or otherwise convey their property, privileges and franchises; and when so sold, leased or conveyed the company acquiring the same shall have and enjoy all the rights and privileges
218 herein granted; and to acquire by lease or purchase the property and franchises and privileges of other street railway companies in the City of St. Louis, and to operate same, and to permit other street railroad companies in the City of St. Louis to run over the tracks of the Central Traction Company of St. Louis, with the consent and agreement of said company.

SEC. 2. Beginning with a single track at the west line of Twelfth street at its intersection with Pine street, thence south on Twelfth street along, over and upon the west track of the Union Depot Railroad Company in Twelfth street, or with a twin track on said west track of the Union Depot Railroad Company to Walnut street, thence east on Walnut street to Eighth street, thence south on Eighth street to Clark avenue, thence east on Clark avenue to Fourth street, thence south along, over and upon the tracks of the People's Railway Company in Fourth street to Chouteau avenue, and along, over and upon the tracks of the People's Railway Company in Fourth street, north from Clark avenue to Morgan street, and with a single track east on Market street from Fourth street to Main street, thence north on Main street to Washington avenue, thence west on Washington avenue to Third street, thence north on Third street to Lucas avenue, thence west on Lucas avenue over and along the track of the Union Depot Railroad Company, between Broadway and Sixth street, or with a twin track contiguous to the track of the Union Depot Railroad Company, between Broadway and Sixth street, and to and into Eleventh street, thence south on Eleventh street, over and along the track of the Benton-Bellefontaine Railway Company, or with a twin track contiguous to the track of said Benton-Bellefontaine Railway Company to Washington avenue, thence west on Washington avenue, either with twin rails or along, over and upon the north track of the Lindell Railway Company to Twelfth street, thence south on Twelfth street to Pine street, thence
219 west into Pine street, and with a double track west on Pine street from Twelfth street to Twenty-first street, thence south on Twenty-first street to and across Chouteau avenue, thence south across city blocks numbers two thousand two hundred and seventy-six and two thousand two hundred and seventy-seven west to Hickory street, and should said Central Traction Company of St. Louis not be able to secure the right to cross said city blocks numbers two thousand two hundred and seventy-six and two thousand two hundred and seventy-seven west from the owners thereof, then said Cen-

tral Traction Company of St. Louis shall have the right to run its cars westward on Chouteau avenue from Twenty-first street to Missouri avenue along, over and upon the tracks of the Lindell Railway Company in Chouteau avenue, or with twin tracks contiguous to said Lindell Railway Company tracks, and to lay a single track south on Armstrong avenue from Chouteau avenue to Hickory street, and to lay a single track on Missouri avenue south from Chouteau avenue to Rutger street, thence west on Rutger street to and into Caroline street, thence west on Caroline street to and into Ohio Avenue, and with a double track on Hickory street west from a point at which the tracks of the said Central Traction Company of St. Louis enter Hickory street, if said company secures the right to lay its tracks across city blocks numbers two thousand two hundred and seventy-six and two thousand two hundred and seventy-seven west from the owners thereof, otherwise from Armstrong avenue to Missouri avenue, thence with a single track on Hickory street from Missouri avenue to and into Ohio avenue, thence south on Ohio avenue to Caroline street, and with a double track on Ohio avenue from Caroline street south to Shenandoah avenue, thence west on Shenandoah avenue to Nebraska avenue, thence south on Nebraska avenue to Itaska street, thence west on Itaska street to Grand avenue, thence south on Grand avenue to Carondelet Park; and with a double track on Magnolia avenue west from Nebraska avenue to Kings-
220 highway, crossing Grand avenue diagonally northward, thence westward and northward across Kingshighway, into Columbia avenue, thence west on Columbia avenue to the Old Manchester Road, thence west on Old Manchester road to Wood street, thence south on Wood street to Arsenal street, thence west on Arsenal street to Ivanhoe avenue, thence south on Ivanhoe avenue to Hancock avenue, thence west on Hancock avenue to McCausland avenue, thence south on McCausland avenue to Lindenwood place, thence west on Lindenwood place to the city limits; and with a double track west on Wyoming street from Nebraska avenue to Spring avenue, thence south on Spring avenue to Gravois avenue, thence southward on Gravois avenue to the city limits; and with a double track on Wyoming street westward from Spring avenue to the Morgan Ford road, thence south on the Morgan Ford road to and into Gravois avenue, and with a double track on Wyoming street, eastward from Nebraska avenue on Thirteenth street, thence north on Thirteenth street to Lynch street, thence east on Lynch street to Eleventh street, thence north on Eleventh street to and into Ann avenue; and with a double track east on Shenandoah avenue from Ohio avenue to Thirteenth street, thence north on Thirteenth street to Ann avenue, thence east on Ann avenue to Broadway, thence north on Broadway along, over and upon the tracks of the St. Louis Railroad Company, or with twin tracks contiguous to said St. Louis Railroad Company's tracks to Russell avenue, thence east on Russell avenue to Second street; and north on Twenty-first street with a double track from Pine street to O'Fallon street, thence east on O'Fallon street to Twentieth street, thence north on Twentieth street to Palm street, thence west on Palm street to Parnell street, thence

north on Parnell street to the Natural Bridge road, thence west on Natural Bridge road, either with twin tracks or along, over and upon the tracks of the Union Depot Railroad Company, and the tracks of the Citizens' Railway Company, the tracks of the Cass Avenue
221 and Fair Grounds Railway Company, to Clay avenue, and with an additional track connecting with the south track of the Mound City division of the Union Depot Railroad Company at the east line of Grand avenue, and extending west on the south side of the Natural Bridge road to and connecting with the south track of the Cass avenue and Fair Grounds Railway Company at Spring avenue, and with a double track northward on Florissant avenue from Palm street to and into Carter avenue, thence westward on Carter avenue to Taylor avenue, thence northward on Taylor avenue to the Bircher road, thence westward on the Bircher road to Rosalie street, thence westward on Rosalie street to its terminus, thence westward along, over and upon the first street opened south of and parallel to Florissant avenue to the city limits; and with a double track on Calvary avenue from the point at which Calvary avenue shall intersect the route of said Central Traction Company of St. Louis, when extended as above described, northward and eastward to Broadway, thence northward either with twin tracks or along, over and upon the tracks of the Baden and St. Louis Railroad Company to its terminus; thence along Broadway to Hornsby avenue, and with a double track on Athlone avenue from Carter avenue to Florissant avenue, and with a double track east on Benton street from Twentieth street to Nineteenth street, thence south on Nineteenth street to North Market street, thence east on North Market street to First street, with a single track on each side of Jackson place, and with a double track west from Twentieth street on Benton street to Garrison avenue, thence north on Garrison avenue to Montgomery street, thence west on Montgomery street to Grand avenue, thence crossing Grand avenue diagonally southward to and into Cottage avenue, thence west on Cottage avenue to Warne avenue, thence south on Warne avenue to Garfield avenue, thence west on Garfield avenue to Whittier street, thence north on Whittier street to North Market
222 street, thence west on North Market street to Marcus avenue, thence north on Marcus avenue to Cottage avenue, thence west on Cottage avenue to Euclid avenue, thence south on Euclid avenue to Spalding avenue, thence west on Spalding avenue, either with twin tracks or along, over and upon the tracks of the Taylor Avenue Railway Company to Kingshighway, thence south on Kingshighway to North Market street, thence west on North Market street to the city limits.

SEC. 3. And the Central Traction Company of St. Louis may also contract, maintain and operate all conduits, curves, switches, sidings, crossings, turnouts and connections, and may make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy; provided, however, that such excavations, embankments, bridges or culverts shall in no way impede, interfere with or affect the general

use of any streets or avenues wherein they may be placed, nor shall they in any way affect the grade of any such street or avenue, and the gauge of the tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

SEC. 4. Said Central Traction Company of St. Louis, its successors and assigns, may operate its railroad along the route authorized herein by electricity. All that portion of said railroad east of Twenty-second street, and between Wash street on the north and Spruce street on the south, shall be constructed and operated by the underground conduit system, and the remainder of said railroad may be operated either by the storage battery, the underground conduit, or by the overhead wire system through overhead and supplementary ground circuit; and for this purpose the poles, wires or other appliances necessary or convenient in the use of electricity as a motive power may be erected and placed along the curbs
223 of all streets on, over, across or along which said railroad may at any place be operated under this ordinance and feed wires for conveyance of current may be constructed and maintained along the line of any of the streets in which said company is authorized to maintain its tracks and from its power house to the line of its road. Said wires to be not less than twenty feet above the surface of the streets, and said poles to be of iron, and at such distance as may be required by the Board of Public Improvements, under whose supervision said work is to be done; and said Central Traction Company of St. Louis shall have the right to make all needful and convenient changes from time to time by the construction and erection of all needful and convenient curves, trenches, excavations, sewer connections, machinery, poles and wires or conduits in any of the streets or highways in, along, over or across which its railroad may be constructed, maintained or operated; provided, that said work shall be done subject to supervision of the Board of Public Improvements. Said Traction Company shall cause the grade of its railroad and tracks to conform to the grades of the streets, now or hereafter established, over which it constructs its railroad, and at all points where said railroad crosses any of the streets of the City of St. Louis.

SEC. 5. Said Central Traction Company of St. Louis shall commence the work of construction within six months after the approval of this ordinance, and have the work completed, and have the railroad authorized herein in operation in the transportation of passengers in cars within three years thereafter; provided, that if said Central Traction Company of St. Louis shall not in good faith have commenced the work of construction on its road within six months after the approval of this ordinance, then, and in that event, this ordinance shall be null and void, and all rights thereunder shall cease and determine; and if said Central Traction Company
224 of St. Louis shall not have the work completed and have the railway authorized herein in operation in the transportation of passengers in cars within the time herein provided for co-

pletion of said road, then, and in that event, the right to construct so much of said work as shall not then be constructed shall cease and determine; and, provided, that if on any portion of the route described in section two of this ordinance, any of the streets should, after the end of three years aforesaid, remain unopened, and said Traction Company having constructed its railway to the point of said unopened street, then said Traction Company shall continue the construction of its railway, beginning the work thereon within sixty days after the completion of the opening thereof, and thence to the terminus of that portion or branch of its line on which such street opening may be located, and complete the same within six months thereafter. And should said Central Traction Company of St. Louis, its successors or assigns, be restrained at any time before or during the construction of its railroad by any legal process, the time actually lost thereby shall be added to the time authorized therein for the commencement of the work of construction of said railroad, and for the completion of said railroad.

From and after the expiration of the time allowed for the completion of said railroad, said Traction Company shall run passenger cars over its line of railroad every day in the year during the life of this franchise, as follows: From six o'clock a. m. to one o'clock a. m. at intervals not exceeding fifteen minutes, and from one o'clock a. m. to five-thirty o'clock a. m. at intervals of not more than one hour.

Said Central Traction Company of St. Louis shall not run its cars on the lines of railway running east from the intersection of Eighteenth and Pine streets at a greater speed than ten miles an hour, nor greater than fifteen miles an hour on any other of the streets on which the right of way is herein granted.

The temporary suspension or the temporary use of horse
225 power in drawing the cars in the event of the derangement of the machinery or other extraordinary emergency, shall not be deemed a violation of this ordinance.

A fare of five cents shall be charged for passengers of twelve years of age and over, and one-half of said fare for persons under twelve and over five years of age. Children's tickets shall be sold by conductors on the car at the rate of two tickets for five cents. Transfers shall be given so as to transport passengers by a continuous trip from any point on the system to any other point on the system.

SEC. 6. Said Central Traction Company of St. Louis shall within sixty days after the approval of this ordinance file with the City Register its written acceptance of all the provisions hereof, and shall file its bond with said Register, with sufficient securities to be approved by the Mayor and Council, in the penal sum of Two Hundred and Fifty Thousand Dollars, that it will save said city harmless from any claim or damages done to persons or property arising from or out of the construction of said tracks, and that it will comply with all the requirements and conditions of this ordinance; and unless said acceptance and bond are filed as aforesaid, then all the

privileges herein granted shall cease and said ordinance shall become null and void.

SEC. 7. The said Traction Company shall keep the streets between the rails, the space between the tracks where there is a double track or more, and to the extent of twelve inches outside of each rail in good repair, as nearly on the level with such rails as practicable, and that portion outside of the rails and between the rails, and the space between the tracks where there is a double track or more shall be of material similar to that used in the street over which it runs or crosses; provided, however, that a better material may be used between the rails if approved by the Street Commissioner, and said space shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the construction, repairing or
226 reconstruction of said street; and, provided, further, that all switches, curves and railway crossings, the spaces between the rails, and one foot outside of the rails shall be paved with granite and maintained and repaired with granite when so demanded by the Board of Public Improvements.

The said Central Traction Company of St. Louis shall run vestibuled cars during the winter months of each year.

SEC. 8. Before beginning the construction of the railroad authorized under this ordinance the said Traction Company shall file in the office of the Board of Public Improvements a plan of the location of its tracks and profile of the same; and should said Board direct any changes in the plan and profile not inconsistent with the provisions of this ordinance, such changes shall be made by said Traction Company.

The rails shall be such as are authorized by the ordinance of the City of St. Louis.

This franchise shall continue in force for a period of fifty years from the date of its passage.

In consideration of the rights and franchises granted in this ordinance to the Central Traction Company of St. Louis, said Traction Company shall pay to the City of St. Louis as follows: Semi-annually on the first of January and July of each year, beginning from the time herein authorized for the completion of said railway, for the first ten years, Ten Thousand Dollars per annum; for the second ten years, Fifteen Thousand Dollars per annum; for the third ten years, Twenty Thousand Dollars per annum; for the fourth ten years, Twenty-five Thousand Dollars per annum; and for the remainder of the time of this franchise, Thirty Thousand Dollars per annum.

SEC. 9. Said Traction Company shall, at its own expense, restore the streets disturbed by it in the construction of its road to the same condition such streets were in before they were disturbed, and under the direction, supervision and to the satisfaction of the Street
227 Commissioner. All paving material removed by said Traction Company in the construction of its railroad shall remain the property of the City of St. Louis, and may be used by the said

Traction Company in restoring the streets; or, if not so used, shall be the property of the City of St. Louis.

This bill, viz., House Bill No. 451, "An ordinance authorizing the Central Traction Company of St. Louis to construct, operate and maintain a single and double track passenger railroad on, over and along and across certain streets, avenues, highways, railways, bridges and city blocks in the City of St. Louis, and to operate its line of railroad by electric power, and to run over the tracks of other roads, and to acquire and convey by lease, purchase or sale its own property and franchises or the property and franchises of other street railway companies in the City of St. Louis, and to operate same," vetoed by his Honor the Mayor, April 8th, 1898, passed by the House of Delegates April 12th, 1898, the objections of the Mayor thereto notwithstanding, by the following vote: Ayes—25. Noes—3.

Attest:

HIRAM LLOYD,
Speaker House of Delegates.

Attest:

GEO. H. MARTIN,
Clerk House of Delegates.

This bill, viz., House Bill No. 451, "An ordinance authorizing the Central Traction Company of St. Louis to construct, operate and maintain a single and double track passenger railroad on, over and along and across certain streets, avenues, highways, railways, bridges and city blocks in the City of St. Louis, and to operate its line of railroad by electric power, and to run over the tracks of other roads, and to acquire and convey by lease, purchase or sale its own property and franchises or the property and franchises of other street railway companies in the City of St. Louis, and to operate the same,"
228 vetoed by his Honor the Mayor April 8th, 1898, passed by the City Council April 12th, 1898, the objections of the Mayor thereto notwithstanding, by the following vote: Ayes—9. Noes—3. Absent—1.

Attest:

E. F. W. MEIER,
President of the Council.

Attest:

CHAS. B. GRAVES,
Secretary of the Council.

ST. LOUIS, *April 13th*, 1898.

I hereby certify that at 10 o'clock 25 minutes a. m. this day I received from Geo. H. Martin, Clerk of the House of Delegates, this bill, which is known as House Bill No. 451, and which I now number as ordinance No. 19,352.

Attest:

HENRY BESCH,
City Register."

That the said United Railways Company accepted the provisions of the said ordinance and has complied with the terms thereof.

That ordinance 19,352 referred to in Clauses 18 and 20 of the complaint has been heretofore in this statement set forth in Clause 20.

(21) That Ordinance No. 21,087 purporting to impose a one mill per pay passenger tax on each car which is heretofore set forth in paragraph 2d, purports to amend and be enacted in lieu of prior ordinances fixing the tax at $25 per car, said prior ordinances being as follows:

"SEC. 2134. LICENSE REQUIRED.—Every person, copartnership, association, corporation or company engaged in the business of transporting — railways shall be subject to pay a license to said city.

SEC. 2135. AMOUNT—METALLIC PLATE.—All persons, co-
229 partnerships, associations, corporations and companies embraced in the foregoing section shall pay to the City Collector, in advance, an annual license of twenty-five dollars for each and every car used by them in transporting passengers for hire within the city. Upon the payment of a license the License Commissioner shall issue a metallic license plate, properly numbered, for each car, which plate shall be placed upon the outside of the car in a conspicuous place, so that it may be readily seen from the sidewalk.

SEC. 2136. NOTICE TO PAY LICENSE—PENALTY.—On the first day of January in each year, the License Commissioner shall notify all persons embraced in this article, transporting passengers on street railways in the city, to pay the license hereby provided for; and in case any of them refuse, fail or neglect to pay said license within ten days after having received said notice, or refuse, fail or neglect to place and keep the metallic license plate, when issued to them, upon the car, as required by the foregoing section, then the License Commissioner shall bring suit against the parties so refusing, failing or neglecting before the police justice of the district within which the main office of said parties is located, and on conviction, said parties shall be fined not less than one hundred dollars nor more than two hundred, for each unlicensed car used by them in transporting passengers within the city, for hire, or for each case of refusal, failure or neglect to place and keep the license plate on the car, as required by ordinance."

That all of said railway companies, including the complainant United Railways Company and St. Louis Transit Company, have at all times paid the sum of $25.00 per car required to be paid under said ordinance and continued so to do until the going into effect of Ordinance 21,087.

(22) That the complainants herein at no time have
230 observed the requirements of Ordinance 21,087 and have not secured or attempted to secure the license therein required nor paid, nor tendered payment of the amounts required for such license, nor complied with any of its provisions, nor has either of said complainants applied for any license to said city or the proper officer charged with the issuance thereof, although notices were duly given them to pay said licenses, as provided by said ordinance.

(23) That the complainant St. Louis Transit Company on Ap

3rd, 1899, accepted Ordinance 19,738, which said ordinance and acceptance was as follows, to-wit:

(19,738.)

"An ordinance for the greater convenience and further transportation of passengers on the railways of the Cass Avenue and Fair Grounds Railway Company, Citizens' Railway Company, Southwestern Railway Company, Southern Electric Railway Company, St. Louis Railroad Company and Baden and St. Louis Railroad Company, respectively, and for that purpose authorizing change of motive power, the connection of railway tracks respectively, and the running of cars of one or more of said companies on the tracks of one or more of the other companies, and of such companies whose tracks may be intersected by the tracks of either of said companies, with authority to run ambulance, funeral, mail and express cars, and also authorizing, if found desirable for said purpose, the sale, conveyance or lease of the rights, privileges, franchises and property of one or more of said companies, and of the companies whose tracks may be so intersected, to another of said companies or to the St. Louis Transit Company, its successors and assigns, and the acquisition thereof, with authority to hold, enjoy and operate the same for a period expiring with the term of the fran-
231 chise of the said Southern Electric Railroad Company, as provided in City Ordinance Number fourteen thousand eight hundred and thirty-seven, and to regulate the speed of cars, and authorizing the Southwestern Railway Company to extend its tracks on Gravois avenue from its intersection with the Morganford road to Bates street, and there to connect with the tracks of the Southern Electric Railroad Company, and extending the time for the completion of its tracks from Grand avenue, on Chippewa street and Gravois avenue to the Morganford road, and the Southern Electric Railroad Company to extend its route on Loughborough avenue, Gravois avenue and Bates street, and to operate the same.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Whereas, it will be to the great advantage of passengers to have the tracks of the Cass Avenue and Fair Grounds Railway Company, Citizens' Railway Company, Southwestern Railway Company, Southern Electric Railroad Company, St. Louis Railroad Company and Baden and St. Louis Railroad Company, respectively, connected, and the cars of said companies respectively, run on the track or tracks of others of said companies.

Therefore, the St. Louis Railroad Company is hereby authorized to connect its tracks on Broadway with the tracks of the Citizens' Railway Company at Morgan street and Franklin avenue, and to connect its tracks on Broadway and Walnut street with the tracks of the Cass Avenue and Fair Grounds Railway Company, and its tracks at Broadway and Elm street with the tracks at that point, and to

connect its tracks at or near Broadway and Keokuk street with the tracks of the Southern Electric Railroad Company; and authority is given to the Southwestern Railway Company to connect its tracks with the Southern Electric Railroad Company at Chippewa street and Jefferson avenue; and thereupon with the consent of the
232 St. Louis Railroad Company and said Citizens' Railway Company, Cass Avenue and Fair Grounds Railway Company, Baden and St. Louis Railroad Company, Southern Electric Railroad Company and the Southwestern Railway Company, respectively, the cars of said companies respectively, may be run on each other of said companies' tracks respectively, and upon the tracks of any railway company with which any of the tracks of said companies may intersect, as may be agreed upon between them respectively, and with such companies whose tracks may be so intersected, and for that purpose, authority is hereby given to make desirable curves and switches and connections therewith, and the cars shall be run at the same rate of speed on the tracks on which they may run as is now provided by ordinance for the running of cars thereon.

SEC. 2. The Southwestern Railway Company, its successors and assigns, is hereby authorized to extend its tracks on Gravois avenue from its intersection with the Morganford road to Bates street and there to connect with the tracks of the Southern Electric Railroad Company, and the time for extending the tracks of the Southwestern Railway Company, from Chippewa street and Grand avenue on Chippewa street and Gravois avenue to the Morganford road, as provided for in ordinance seventeen thousand one hundred and eighty-five, is hereby extended for the period of two years from the approval of this ordinance, and the Southern Electric Railroad Company, its successors and assigns, are authorized to extend its railway and operate its cars beginning with connections with its present double track on Broadway and its intersection with Bates street; thence with double tracks on Bates street to Gravois avenue; thence south on Gravois avenue to Loughborough avenue; thence east on Loughborough avenue with single or double track with necessary cross-overs and turn-outs to connections with its tracks at present on
Broadway, with power to erect poles and string wires in the
233 same manner as is now authorized on other parts of its road, and to cross the tracks of any other railway company on its said route, and the cars thereon shall be operated at a speed not exceeding fifteen miles an hour.

In case street railway track or tracks shall be constructed on Gravois avenue between Chippewa street and Loughborough avenue, before the tracks in this section, or by Ordinance seventeen thousand, one hundred and eighty-five, authorized to be built thereon, are constructed, then the said Southwestern Railway Company and said Southern Electric Railroad Company, their successors or assigns, respectively, are hereby authorized and empowered to make connections with said track or tracks as constructed, and operate their cars thereon, respectively, for such distance as they are herein respectively authorized to construct their tracks, on said avenue, upon paying compensation as in such case is provided by ordinance,

or said Southwestern Railway Company and said Southern Electric Railroad Company, their successors and assigns, respectively, may, at their option, respectively construct and operate twin tracks along and contiguous to said track or tracks so before constructed as aforesaid.

Said companies, their successors and assigns, respectively, shall commence the construction of their tracks herein above authorized to be extended, within six months after the said streets and avenues are opened and graded, and shall complete the same within three years thereafter; but if said companies, their successors and assigns, respectively, shall desire to construct said tracks before said streets and avenues are opened and graded, they shall have respectively the privilege of grading said streets and avenues at their own expense, respectively, and constructing said tracks at any time. Said construction of said tracks shall be under the supervision and to the satisfaction of the Board of Public Improvements, and said railroad companies, their successors and assigns, respectively, shall, respectively, pave their tracks, the space between the tracks, and one
234 foot outside of the tracks, so constructed, with the same, or better material, than that with which the remainder of the said streets and avenues along said railroad tracks shall be paved, under the supervision and to the satisfaction of the Board of Public Improvements, and said companies, their successors and assigns, respectively, shall, before beginning said construction of said tracks, file, respectively, their bond with the City Register, to be approved by the Mayor and Council, in the sum of ten thousand dollars, that they, respectively, will save the City of St. Louis harmless, on account of any and all damages sustained by any person by reason of the construction of said tracks, respectively.

SEC. 3. For the better effecting the purpose of this ordinance, the said Cass Avenue and Fair Grounds Railway Company, Citizens' Railway Company, Southwestern Railway Company, Southern Electric Railroad Company, St. Louis Railroad Company, Baden and St. Louis Railroad Company, and any company whose tracks may be intersected by the tracks of any of said companies, and their successors and assigns, are hereby severally authorized to sell, convey or lease, if found desirable, their property, rights, privileges and franchises now owned and held or herein granted, respectively, to any of the said companies named in this section, or to the St. Louis Transit Company, its successors and assigns, the said company and its successors and assigns so acquiring such property, rights, privileges and franchises, is hereby authorized to acquire, hold and enjoy the same during the term of this ordinance, provided, however, that if such acquisition is had, passengers shall be transported over the whole or part of said railroads or railways, in the City of St. Louis, so acquired, on one continuous ride for one fare, and for that purpose transfers may be made at convenient points.

SEC. 4. Said railways or railroads, or any part thereof,
235 may hereafter be operated by any motive power, except steam engines, in the streets, and for that purpose there may be all necessary wires, poles and other suitable appliances erected and

placed and maintained from time to time, on or in the streets, and also leading to the power houses where said motive power may be obtained, now or hereafter to be built, the same to be erected and placed under the direction and to the satisfaction of the Board of Public Improvements.

SEC. 5. In case any company named in this ordinance shall acquire the property, rights, privileges and franchises of any of said other companies, as provided in section three of this ordinance, said company so acquiring the same shall pay the sum now required by City Ordinance, to be paid by each of the respective companies, whose property, rights, privileges and franchises shall be so acquired. And said Cass Avenue and Fair Grounds Railway Company shall, during the period beginning January first, nineteen hundred and twenty-five, and ending January first, nineteen hundred and thirty-one, continue the payment of three and one-half per centum on its gross earnings from passenger receipts, as provided in section five of ordinance sixteen thousand, six hundred and thirty-nine, and from January first, nineteen hundred and thirty-one, until the termination of this ordinance, four per centum of its gross earnings from passenger receipts, and from the operation of all its cars; also, as provided in section five of ordinance sixteen thousand six hundred and thirty-nine. And it is further provided that the failure on the part of any one or more of said companies to pay to the City of St. Louis, when the same is due, or within sixty days thereafter, any payment or payments now required by any ordinance, or by this ordinance, or by this ordinance to be paid by such company or companies respectively, shall cause the forfeiture of all the rights, privileges and franchises now possessed by or by this ordinance granted to such company or companies, respectively, so in default.

236 SEC. 6. In case any company shall acquire the property, rights, privileges and franchises of another company or other companies as provided in section three of this ordinance, the rate of speed that cars shall be propelled by it shall be the same as is now provided for the running of cars on the tracks so acquired.

SEC. 7. Said companies, or any of them, may, for the convenience of the public, operate ambulance, funeral, mail and express cars and carry express matter, provided, however, that no express matter shall be received or delivered in the following territory, to-wit: East of Grand avenue and between Cass avenue on the north and Walnut street on the south.

SEC. 8. The rate of fare for a single continuous passage one way, within the City of St. Louis, shall be five cents for each person twelve years of age or upward, and two and one-half cents, or two tickets for five cents, for persons under twelve years of age and over three years.

SEC. 9. This ordinance shall be and remain in force until the expiration of the franchise of said Southern Electric Railroad Company, as provided for in section two of Ordinance number fourteen thousand, eight hundred and thirty-seven, for the Southern Railway Company, its successors and assigns.

SEC. 10. This ordinance shall not become effective unless within

inety days after the approval thereof each of said companies shall ile with the City Register its written acceptance of all the condiions of this ordinance, and its agreement that it will comply with ll the terms and conditions of this ordinance, and all valid general rdinances now in force or that may hereafter be passed in refernce to street railways.

Approved March 20, 1899."

37 "St. Louis Transit Company, of the City of St. Louis and State of Missouri, does hereby accept all the conditions of an rdinance of said City of St. Louis Number 19,738, entitled, "An rdinance for the greater convenience and further transportation f passengers on the railways of the Cass Avenue and Fair Grounds ailway Company, Citizens' Railway Company, Southwestern Railray Company, Southern Electric Railroad Company, St. Louis Raiload Company and Baden and St. Louis Railroad Company, repectively, and for that purpose authorizing the change of motive ower, the connection of railway tracks respectively and the running f cars of one or more of said companies on the tracks of one or nore of the other companies, and of such companies whose tracks nay be intersected by the tracks of either of said companies, with uthority to run ambulance, funeral, mail and express cars, and also uthorizing, if found desirable for said purpose, the sale, conveyance r lease of the rights, privileges, franchises and property of one or nore of said companies and the companies whose tracks may be so ntersected, to another of said companies or to the St. Louis Transit ompany, its successors and assigns, and the acquisition thereof, ith authority to hold, enjoy and operate the same for a period exiring with the term of the franchise of the said Southern Electric ailroad Company, as provided in City Ordinance Number 14,837, nd to regulate the speed of cars, and authorizing the Southwestern ailway Company to extend its tracks on Gravois avenue from its ntersection with the Morganford road to Bates street, and there to onnect with the tracks of the Southern Electric Railroad Company, nd extending the time for the completion of its tracks from Grand venue, on Chippewa street and Gravois avenue to the Morganford oad, and the Southern Electric Railroad Company to extend its oute on Loughborough avenue, Gravois avenue and Bates street, and to operate the same," approved the 20th day of March,

38 1899, and agrees that it will comply with all the terms and conditions of said ordinance, and all valid general ordinances ow in force or that may hereafter be passed in reference to street ailways.

In witness whereof said St. Louis Transit Company has caused hese presents to be signed by its President and its corporate seal o be hereto affixed. Attested by its Secretary, this 3rd day of pril, 1899.

[SEAL.] ST. LOUIS TRANSIT COMPANY,
By A. H. BAUER, *President.*

(Stamp.)

Attest:
WILLIAM J. ORTHWEIN, *Secretary.*

CITY COUNSELLOR'S OFFICE,
ST. LOUIS, *April 7th,* 1899.

The foregoing acceptance is in due form of law.
B. SCHNURMACHER,
City Counselor.

St. Louis, Mo., April 10th, 1899.

Approved,
H. ZIEGENHEIN, *Mayor.*"

CHAS. W. BATES,
WM. F. WOERNER,
For Defendants.
BOYLE & PRIEST,
For Complainants.

239 And afterwards, to-wit: on the 6th day of June, A. D., 1906, the following proceedings were had and appear of record in said cause, to-wit:

(*Cause Argued and Submitted.*)

4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS ET AL., Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

Now at this day this cause is argued by counsel and submitted to the court.

And afterwards, to-wit: on the 17th day of September, A. D., 1906, the following further proceedings were had and appear of record in said cause, to-wit:

(*Final Decree.*)

4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

This cause having been heretofore submitted to the Court, upon the evidence and proofs adduced and the Court being fully advised concerning the premises, it is now

Ordered, adjudged and decreed by the Court, that the defendant City of St. Louis, its officers and agents, be and they are hereby perpetually enjoined and restrained, from in anywise asserting or

seeking to enforce any of the provisions of an alleged ordinance of the said City, numbered 21,087, assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or either of them, on cars used by them over their street railways in the City of St. Louis; that the said City of St. Louis, its officers and agents, and each of them be, and they are hereby likewise enjoined and restrained, from in any manner, by suit or otherwise, asserting or enforcing, said alleged ordinance numbered
240 21,087 against the complainants, or either of them, and that complainants recover of said defendant their costs and charges herein expended and have execution therefor.

September 17th, 1906.

(Signed) G. A. FINKELNBURG, *Judge.*

And afterwards, to-wit: on the 11th day of December, A. D., 1906, the following further proceedings were had and appear of record in said cause, to-wit:

(*Order Granting Appeal.*)

#4985.

UNITED RAILWAYS COMPANY and ST. LOUIS TRANSIT COMPANY, Complainant,

vs.

CITY OF ST. LOUIS, Defendant.

Now comes said defendant by its solicitor and files and presents to the Court its Assignment of Errors and Petition for Appeal from the final decree heretofore rendered herein to the Supreme Court of the United States; upon consideration whereof, it is

Ordered that said petition be and it is hereby granted and that said defendant give an appeal bond for costs in Five Hundred Dollars; thereupon the said defendant presents such a bond conditioned as required by law, which is approved and ordered filed, and it is

Further ordered that the Clerk of this Court make out and certify to the said Supreme Court a full, true and complete transcript of the record and proceedings in this cause. Citation issued and filed.

December 11, 1906.

(Signed) G. A. FINKELNBURG, *Judge.*

Which said Assignment of Errors, Prayer for Appeal to Supreme Court and Bond are respectively in words and figures as follows, to-wit:

241 (*Assignment of Errors.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4985.

UNITED RAILWAYS COMPANY and ST. LOUIS TRANSIT COMPANY, Plaintiffs,

vs.

THE CITY OF ST. LOUIS, Defendant.

Comes now the City of St. Louis, defendant in the above entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons:

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis impaired the obligations of any of the special franchise ordinance- of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to construct, operate and
242 maintain street railways in said City, precluded the defendant the City of St. Louis from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis, by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction, maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license tax by virtue of the special franchise ordinances granting it, or its assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had,

in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its Charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant The City of St. Louis prays that the decree of the Circuit Court be reversed, and that said Court be directed enter a decree in favor of said defendant.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant.

243 (*Prayer for Appeal to Supreme Court.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4985. In Equity.

UNITED RAILWAYS COMPANY and ST. LOUIS TRANSIT COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

Petition for Appeal.

Now comes the City of St. Louis, the above-named defendant by its solicitors, and conceiving itself aggrieved by the final decree made and entered on the seventeenth day of September, A. D. 1906, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made and entered, duly authenticated, may be sent to said Supreme Court of the United States, at the City of Washington, D. C.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Said Defendant.

St. Louis, Mo. Dec. 12, 1906.

Bond.

Know all men by these presents,

That we, The City of St. Louis as principal and Rolla Wells as surety are held and firmly bound unto the United Railways Company and St. Louis Transit Company in the full and just sum of Five Hundred Dollars to be paid to the said United Railways Company and St. Louis Transit Company their successors, or
244 assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 12th day of December in the year of our Lord one thousand nine hundred and six.

Whereas, lately at the September term A. D. 1906, of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between the United Railways Company and St. Louis Transit Company plaintiff and The City of St. Louis defendant final decree was rendered against the said defendant and the said defendant has obtained an appeal of the said Court to reverse the final decree in the aforesaid suit, and a citation directed to the said United Railways Company and St. Louis Transit Company citing and admonishing them to be and appear in the Supreme Court of the United States at the City of Washington, D. C., thirty days from and after the date of said Citation.

Now the condition of the above obligation is such, that if the said City of St. Louis shall prosecute said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

Attest:

CITY OF ST. LOUIS, [SEAL.]

[SEAL.] By ROLLA WELLS, *Mayor.* [SEAL.]

ROLLA WELLS. [SEAL.]

PATRICK J. REGAN, *Register.*

Approved.

G. A. FINKELNBURG, *Judge.*

245 *Opinion.*

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri.

UNITED RAILWAYS COMPANY OF ST. LOUIS and ST. LOUIS TRANSIT COMPANY, Complainants,
vs.
CITY OF ST. LOUIS, Defendant.

Memoranda of Conclusions Reached on Motion for Preliminary Injunction.

ADAMS, *District Judge:*

This case is now before the Court on a motion for a preliminary injunction. The complainants are corporations engaged, one as lessor and the other as lessee, in operating street cars over and along the streets of the City of St. Louis. They secured their rights by ordinance in the nature of contracts entered into between their assignors, or predecessors in right, and the City of St. Louis. In all these ordinances or contracts the City in terms granted to the "railway companies their licensees, successors and assigns permission and authority to construct, maintain and operate" railroad tracks on and along certain streets and alleys, particularly specified in each ordinance. This grant was made in consideration of certain terms, conditions and stipulations found embodied in the several ordinances. Among them are the obligations imposed and consented to by the several assignor railroad companies. (1) To commence and complete the work of laying down the tracks and enstalling the roads within certain spec-fied periods. (2) To grade the streets from curb to curb. (3) To construct and keep in repair that portion of the street lying between the tracks and twelve inches outside thereof. (4) To cause cars to be run day and night at certain intervals named in the ordinances. (5) To pay certain stipulated sums of money, or certain percentages of the gross earnings
246 of the several companies to the City each year during the continuance of the privileges specified in the contract.

After the several assignor companies had constructed their roads, graded and constructed the streets, made provisions for operating the cars according to the schedules specified, and had been paying the stipulated yearly sums to the City as required by the contracts, and after all of the assignor companies had sold and transferred their rights and privi ges, so acquired from the City, to the complainant companies, the City of St. Louis on March 25, 1903, by and through its Mayor and Municipal Assembly enacted an ordinance purporting to amend the general ordinances constituting the contracts already referred to.

This ordinance in substance and effect, among other things, enacts: That all persons, co-partnerships, corporations, associations, or companies engaged in the business of transporting passengers

from one point to another, within the City, for hire, shall pay a license to said City, and further enacts: That they "shall pay the License Collector a quarter license for each and every car used by them in transporting passengers." * * * "The amount of each quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during said preceding period of three months."

This same ordinance approved March 25, 1903, provides forfeitures and penalties for any failure on the part of any railroad company to comply with its terms.

The bill shows that the defendant city is threatening to enforce this ordinance, and to exact from the complainants the license fee of one mill for every pay passenger as required by the ordi-
247 nance, and is also threatening the institution of criminal actions to enforce the penalties prescribed by the ordinance. This license fee, as is alleged, is the equivalent of 2 per cent. of the gross earnings of the complainant companies.

The prayer of the bill is to enjoin the defendant city from enforcing this ordinance on the ground that its enforcement would impair the obligation of the contracts under which the subsidiary companies and the complainants, their assignees, accepted their grants from the city.

The present submission not being upon the merits the Court feels constrained to refrain from considering any questions, except such as are necessary in passing upon the present motion for a preliminary injunction.

The sovereign power over streets and highways is as a general rule lodged in the state, but the state may delegate the exercise of such power in cities to the municipal authorities.

Article XII, Section 20 of the Constitution of Missouri, ordains: "No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city" * * * "without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad."

Street railway companies derive their franchises or right to exist from the state, but they may not construct or operate their cars over the street of a city, without securing the consent of the city authorities thereto. The consent to use the streets of the city is all the city has to grant, and this consent it may grant on and subject to such terms, conditions and stipulations as seems to it best. In the exercise of the power just referred to, the city gave its con-
248 sent to the complainants' assignors for different periods of time ranging up to forty or fifty years, as shown in the several ordinances granting the right to such assignors. The city gave this consent on and subject to terms and conditions which the bill discloses to have been and are now being fully kept and performed by the complainants. The several roads have been constructed, the streets graded, constructed and paved; the obligation to operate day and night performed, and being performed under the penalty of for-

feiture of the right granted. The stipulated yearly stipends for the use of the streets have been promptly paid.

In these circumstances can the city enforce the ordinance of March 25, 1903, creating the additional burden of 2 per cent. on the gross earnings of the railroad companies.

The city contends that it can do so and plants its right so to do on the fifth sub-division of section 26 of Article 111 of the City Charter. This sub-division is as follows:

"The Mayor and Assembly shall have power within the city by ordinance not inconsistent with the Constitution or any law of this State or of this Charter, to license, tax and regulate," * * * among other things and occupations, "street railroad cars."

It is contended that the prior ordinance under which the assignor companies constructed the roads, conferred the right-of-way along the streets of the City of St. Louis only, and did not grant a license to use such right-of-way; therefore, that the defendant's power to license the use of the right-of-way was left in the city, and that it has by the ordinance complained of in the bill only exercised a clear power conferred upon it by the Charter. If these premises are sound, the conclusion is inevitable. But I cannot so un-
249 derstand the purport and meaning of the original ordinances.

The city was authorized by the Constitution of the State to give its consent to the use of its streets, both for the purpose of constructing and operating railroads thereon. This grant of power obviously embraces both the power to consent to appropriating the street as a right-of-way and to use the street thereafter for the operation of railroads thereon. It seems to me that the original ordinances amount to just that which the fundamental law clearly contemplates, namely; a license to use the streets, both as a right-of-way and for the operation of complainants' railways during the terms fixed therein.

This grant as found in each and all of the original ordinances is a "permission and authority to construct, maintain and operate railroad tracks."

Article 111, Section 26, sub-division 11 of the Charter empowers the city through its Mayor and Municipal Assembly, "to have sole power and authority to grant to persons or corporations the right to construct railways in the city."

By sub-division 5 and sub-division 11 just referred to, the power to license street railway cars, and the power to grant the right to construct street railways in the streets of the city, are both conferred upon the Municipal Assembly. There is neither statutory command, nor any perceptible reason why both these powers should not be exercised in one and the same ordinance, and such in my opinion is the obvious purpose of the original ordinances granted to complainants' assignors.

The right "to construct and operate" is conferred in terms admitting of no doubt. The license which is essentially an occupation tax is, in my opinion, also fixed in each of the ordinances.
250 The several original ordinances, or contracts clearly mean, that the city exacted, among other things, certain quarterly or yearly payments of money to be made to it by the railroad com-

panies as a consideration for the grant by it of the right to occupy and use its streets for the purpose of laying down, maintaining and operating railroad tracks thereon. The law nowhere commands that the license fee as authorized by the fifth sub-division in question shall be for annual or other terminal occupation. And I perceive no reason why the city may not at the outset fix such a license for the full term of its grant. This is what I think it did in and by the terms and stipulations of the several ordinances in question.

Moreover Article X of the City Charter confers upon the Municipal Assembly power by ordinance to determine all questions arising with reference to street railroads in the corporate limits of the city, whether such questions may involve the construction of such street railroads granting the right-of-way, or regulating and controlling them after their completion. Here certainly is found express authority to deal in one ordinance or more with all questions relating to the regulation and control of them after their completion.

My judgment is that the city exercised its power in the original ordinances or contracts. It both granted the right-of-way and fixed the terms upon which the complainants and their predecessors might operate their cars. These original ordinances were therefore licenses within the meaning of Section 26 sub-division 5th of Article 111 of the Charter, and conferred the right upon the complainants and their predecessors to use the streets of the city specified, for and during the terms therein named. These ordinances are contracts, made in the exercise of a power to contract, and not in the exercise of the legislative powers.

The parties agreed upon the consideration to be paid for
251 the privileges granted. The city fixed its price for the occupation of its streets and the operation of its cars thereon. The complainant companies are bound by the terms so fixed, and why should the city not be bound?

If the city can, after once exercising its power and fixing the terms and conditions of its grant, change them in one particular, it can in all. If it can increase the once fixed charge for occupying the streets, (called license tax) by 2 per cent. of the gross income, it can exact 50 per cent. or more, and of course can utterly destroy the value of the complainants' property. It is this kind of invasion of property rights, which in my opinion, the Constitution of the United States, (Section 10, Article I.) is intended to prevent.

It is not contended in argument in this case that the ordinance of 1903 in any sense comes under the general head of laws passed in the exercise of the police power. Of course all the original contracts made between complainants' assignors and the city are and always will be subject to any and all reasonable legislation intended for the safety and health of the citizens. Such legislation as this falls properly within the police power of sovereignty which, as is well known, cannot be contracted away.

The motion for a preliminary injunction must be sustained.

252 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS
vs.
CITY OF ST. LOUIS.

FINKELNBURG, *District Judge:*

After a careful examination of the record as now presented, I am persuaded to adhere to the position heretofore taken by Judge Adams at the preliminary hearing of this case, and for the reasons then so well stated by him in his opinion, viz: the inviolability of the contracts entered into between the City on the one hand and the Railway Company on the other hand.

Single detached provisions may indeed be noted from constitution and city charter which, taken by themselves, would seem to authorize the passage and enforcement of the ordinance here in controversy. But of course these instruments must be construed as a whole and effect given the other portions of them.

In brief, I find that under the constitution, laws and city charter applicable to this subject the City of St. Louis had a right to enter into contracts with reference to the construction and operation of these street railways—that it did enter into such contracts and fixed the terms—that a contract having been entered into its terms were not open to alteration thereafter by the City alone—that ordinance No. 21087 is an attempted violation of the terms of said contracts—that therefore its enforcement ought to be enjoined.

Counsel for defendant in their brief (p. 61) admit that, "if the city had attempted by ordinance to increase the special amounts of fixed sums or on gross receipts that the various companies had contracted to pay in the ordinance conferring these franchises" then the ruling in Detroit *vs.* Railway, 184 U. S. 368, would ap-

253 ply because they say, "on that point there *was* a contract;" but they contend that in the case at bar no such attempt was made; that the City simply amended its license tax on street cars, and that as to this there never was any contract. I cannot agree with this view of the situation. We must look at the substance, not names. The so-called amended license tax is an exaction of two per cent. on the gross earnings of the complainant's railways *in addition* to what was specially agreed upon as a consideration for the right to construct and operate these railways. The substance and true meaning of such a provision cannot be changed by calling it by another name. As a contract is obligatory on the citizen so it must be binding on the public authority. As Judge Adams well said in the opinion referred to:

"If the City can after once exercising its power and fixing the terms and conditions of its grant, change them in one particular, it can in all. If it can increase the once fixed charge for occupying the streets (called license tax) by 2 per cent. on the gross income it can exact 50 per cent. or more, and of course can utterly destroy the value of the complainants' property. It is this kind of evasion

of property rights which in my opinion the Constitution of the United States (Sec. 10, Art. I) is intended to prevent."

As to the power of the Municipal Assembly to deprive itself of the further right to enforce taxes by contract, the distinction between general taxes and so-called license taxes must be borne in mind. The latter are not within the usual constitutional prohibitions against exemptions, etc. The Municipal Assembly may license or not license a particular occupation or business, or it may
254 exact a license tax for a number of years and exhaust its power to exact any more, as I think it has done in this instance.

The contention that the prior ordinances under which these railways were constructed confer rights of way only, but not the right to use them, or, as defendant's counsel put it, a right "to be" but not "to do," strikes me as an unreasonably narrow construction of those prior ordinances. The granting part of these ordinances all contain the words: "To construct, maintain and operate," or words equivalent thereto. But this point is also fully considered by Judge Adams, whose entire opinion I adopt for the purpose of this decision.

In view of the premises I am of opinion that the temporary injunction heretofore issued in this cause should be made permanent, and it is so ordered.

255 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, James R. Gray, Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a full, true and complete transcript of the record and proceedings in Case No. 4985 of United Railways Company of St. Louis and St. Louis Transit Company, Plaintiff-, *vs.* City of St. Louis, Defendant, as fully as the same remains on file and of record in said case in my office, and that the original citation is hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at office, in the City of St. Louis, in the Eastern Division of said District, this fifth day of January, in the year of our Lord, nineteen hundred and seven.

[Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri.]

JAMES R. GRAY,
Clerk of said Court,
By —— ——, *Deputy.*

[Endorsed:] No. 4985. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. United Railways Co. of St. Louis *et al.*, against City of St. Louis. Duly certified Transcript of record & proceedings in the above entitled cause.

Endorsed on cover: File No. 20,519. E. Missouri C. C. U. S. Term No. 193. The City of St. Louis, appellant, *vs.* The United Railways Company and The St. Louis Transit Company. Filed January 10th, 1907. File No. 20,519.

FILED.
MAR 10 1908
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 193.)

THE CITY OF ST. LOUIS,
Appellant,
vs.
THE UNITED RAILWAYS COMPANY AND THE ST. LOUIS TRANSIT COMPANY,
Appellees.
No. 20,519.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

APPELLANT'S STATEMENT OF THE CASE.
ASSIGNMENT OF ERRORS.
POINTS AND AUTHORITIES.
ARGUMENT.

CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant, City of St. Louis.

J. W. Steele & Co., Prs., 13 N. Third, St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 193.)

THE CITY OF ST. LOUIS,
Appellant,
vs.
THE UNITED RAILWAYS COMPANY AND THE ST. LOUIS TRANSIT COMPANY,
Appellees.
No. 20,519.

STATEMENT OF THE CASE.

This cause is an injunction proceeding, brought originally by the complainants (here appellees) by bill in equity filed on April 12th, 1904, in the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri, against the City of St. Louis (here appellant) to restrain the latter from enforcing the provision of an ordinance known as No. 21,087, herein below referred to, passed by its legislative body, termed the Municipal Assembly.

The jurisdictional ground alleged is conflict with the

impairment of contract clause of the United States Constitution (Section 10 of Article I) and deprivation of property without due process of law and denial of equal protection of the law (Article XIV of Amendment). The allegations and contentions of the bill and answer are more fully stated below.

A preliminary injunction was awarded by the Court, and made permanent upon final hearing.

The case was heard upon bill, answer, replication and an agreed statement of facts (Print. Rec., pp. 38-149). Appeal was duly granted, assignment of errors filed, bond given, and the case duly brought to this Court.

There is no controversy as to the facts, which are recited in an agreed statement.

The appellant, City of St. Louis, is a municipal corporation organized under a charter in pursuance of a Special Constitutional Provision, Article IX, Sections 20 to 25 inclusive, of the Missouri Constitution of 1875 (Print. Rec., p. 38). The charter provisions authorizing the above ordinance are referred to hereinafter.

The complainants (appellees here) at the time of the institution of this cause were Missouri corporations engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways; the St. Louis Transit Company being so engaged as the operating lessee for that purpose, of the owner, the United Railways Company, which had leased all its lines and cars to said Transit Company for operation.

The United Railways Company was originally incorporated in 1898 under the name of the Central Traction Company, and on July 8th, 1899, the name was changed to United Railways Company (Print. Rec., p. 38).

This United Railways Company, or Central Traction

Company as it was then called (in pursuance of authority conferred in ordinances 19352 passed in April, 1898, and 19738, in March, 1899), proceeded to acquire by purchase or merger numerous of the street-car lines in the City of St. Louis, from time to time, and at the institution of this suit had absorbed about all of them, with the exception of the St. Louis and Suburban lines (which are here as respondents in causes 20,520 and 20,521 in this Court, and which, if there is no impropriety in stating what does not appear in the printed record, it may be suggested, were also absorbed by the United Railways Company since the appeal in this cause was taken). The United Railways Company therefore appears as the successor or assignee of a large number of former street railway companies which received their respective franchises to operate their lines within the City, from time to time by independent special ordinances, some going back a great period of time (for instance, the franchise of one of these assignors, the St. Louis Railway Company, was conferred by ordinance 4,371 approved in 1859, Print. Rec., p. 109). These "special" or franchise ordinances, for the old railway lines now constituting the United Railways Company, are more particularly referred to hereinafter.

The general ordinance attacked in this cause is known as No. 21,087, and is set out in full in the pleadings and in the agreed statement in the transcript of the Record (Print. Rec., pp. 43-46). This ordinance was enacted and approved March 25th, 1903. It provides that every person, etc., corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay the License Collector of said City, a quarter annual license for each and every car used by them in transporting passengers, "the

amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months" (Print. Rec., p. 44). The manner of equipping cars to show the number of passengers carried, and the filing of a report, is also provided for. A refusal to comply with the terms of the ordinance is made a misdemeanor punishable by fine (which is, however, not a criminal but a civil proceeding in Missouri). The ordinance further provides that the license-tax therein called for shall not be construed as exempting or excusing the payment "of any sum agreed, assumed or required to be paid by the terms of any special ordinance or agreement or contract, nor as affecting the same in any way, nor as impairing or affecting any license theretofore obtained."

Set out in full, this ordinance is as follows (Print Rec., p. 43):

(21,087).

"An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transportating passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation,

company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in contiuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number of figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number of figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness

and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table, and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903."

It is to be observed that the ordinance does not call for a percentage of gross receipts at all, but for a license tax on each separate car operated, the amount of which is to be determined as above stated.

This ordinance 21,087, imposing the aforesaid license tax, is not an imposition for the first time of a license tax on each street car from and after its passage in March, 1903, but on the contrary purports to be and is merely an amendment of the street car license tax which was in force at the time and for many years theretofore had been in force, and was in force when all of the franchise ordinances were passed, and which fixed the license tax at $25.00 for each car per annum. (The prior ordinance provisions are

set out Print. Rec., p. 144.) The function of the amending ordinance of 1903, No. 21,087, was mainly to substitute for this fixed sum of $25.00, a sum equal to one mill per passenger on each car.

All of the numerous railway companies constituting the assignors of complainants (whose rights were acquired), as well as complainants themselves, at all times complied with the old ordinance, and they "have at all times paid the sum of $25.00 per car required to be paid under said ordinance, and continued so to do until the going into effect of Ordinance 21,087" (Print. Rec., p. 144, original rec., p. 229, last par.).

But upon the passage of the latter, complainants refused to comply with any of its provisions; and when the City served the required notice and threatened to enforce the ordinance against complainants, they instituted this cause to restrain it, on the alleged ground as stated in the bill that the ordinance operated to impair the obligations of contracts between them and the City, and to deprive complainants of their property without due process of law and to withhold from them the equal protection of the laws, and was hence unconstitutional as in conflict with Section 10 of Article I of the United States Constitution, and Article XIV of the Amendments. (Print. Rec., pp. 22-23.)

The bill alleges that said ordinance 21,087 does not call for "a license fee but is a charge and compensation assumed to be exacted from these complainants as a consideration for rights and franchises already granted to them by contracts with the City of St. Louis and paid for by complainants in accordance with the provisions of said contracts." (Print. Rec., p. 23.)

The bill of complaint sets out with particularity all the various constitutional and charter provisions involved, with

the conspicuous exception of the one vital provision in pursuance of which the said ordinance 21,087 was really enacted, namely, the charter right "to license, tax and regulate street cars," which the bill entirely ignores.

The answer sets forth the various defenses to the allegations of the bill, and specifically declares the right of the City to enact the said ordinance 21,087 as a license tax under charter provisions in the answer set up (and hereinbelow given in full), and denies that the special franchise or right-of-way ordinances pleaded as contracts in the bill, can be construed as exercising or surrendering the right of the City to impose the license tax provision in ordinance 21,087.

To be a little more specific, the answer, after setting forth what parts of the bill of complaint are denied and what admitted, and after setting out certain constitutional and charter provisions (amongst them in par. 6 the right to amend, alter or repeal a grant in whole or in part), then goes on in paragraphs 7, 8, 9, and 10 of said answer to state specific defenses, which, since they may be taken as indicative of the main position of the defendant City, we may be pardoned in quoting, as follows (Print. Rec., pp. 29-34):

> (7) And defendant states that having exclusive and plenary power under the Constitution, statutes, charter provisions and laws of the State to grant or withhold its consent to the complainants and their assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did, when complainants desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as

conditions for obtaining a franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainants' bill and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainants and their assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise or right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a license fee for the exercise of such right so conferred on the aforesaid conditions, nor to require payment of a general property tax on complainants' property.

(8) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainants' bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its charter Article III, Section 26, clause 5th, by ordinance, to license, tax and regulate street railroad cars (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21,087, approved March 25, 1903 (being the same the enforcement of which complainants seek to enjoin), which is as follows, to-wit:

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the 'Municipal Code of St. Louis' by striking out said sections and insert-

ing certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

[Here follow the provisions of ordinance 21,087 which have been hereinabove set out in full, so the same is omitted here.]

(9) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privilege conferred upon the complainants or any of their assignors; that the obligations assumed by complainants and their assignors in the respective ordinances conferring franchises, rights and privileges were in no sense license fees or license taxes upon street cars, but only conditions under which the city consented that said complainants and their assignors could obtain the valuable rights to the use of its streets, and in no way operated to exempt complainants from the imposition of license taxes and fees for the exercise of their business and the rights conferred by said franchises. On the contrary defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25 each year on each street car operated by any street car company and which license fee and tax complainants had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on

each street car, and accurately considered is not, as alleged by complainant, a charge against the said companies upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And the defendant further states that said United Railways Company when it accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned, and at all other times, and the St. Louis Transit Company when it entered into the alleged lease mentioned in said bill, and at all other times, and all the assignors of either of said companies, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21087.

And defendant specially denies that the amount required to be paid is as alleged by complainants "absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by them, and to the proper discharge of the obligations imposed upon them by the several special ordinances" by them set forth; and defendant states that if said allegations were true it would be owing to the obligations incurred by complainants to pay dividends on preferred stock, interest on mortgages and other heavy expenses based on a fictitious valuation of their assets and capital stock which is by them treated and held out to stockholders, bondholders and others at an amount many millions of dollars above its actual and honest value; and that the business of said companies and their receipts yields very large profits upon the basis of the actual assets invested and yields large profits even upon the fictitious valuation of assets above stated far in excess of the amounts required for the purposes stated by complainants, but that if complainants are unable or indisposed to continue their said business and comply with the lawful

and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790a of Ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of their said franchises and chartered rights, which action complainants have declined to adopt, but on the contrary, in open violation of said ordinance 21087, operate street cars and engage in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10) Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies equally with complainants, and that said St. Louis Transit Company expressly agreed on May 3, 1899, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinance 19738 referred to in said complainants' bill, and without which the same would not have become effective, to accept all obligations therein imposed on said complainants, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways; and said respective assignors of complainants entered into similar agreements as a condition permitting them to assign such rights or franchises to complainants or either of them, wherein said assignors and each of them agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

The replication amounts to a general denial of new matter.

The contention of the railway companies, as we understand it, is not that the City of St. Louis had no right to enact this general ordinance in question. It is that the same cannot be made applicable to them because, in the

diverse and sundry prior special ordinances (by which the City enfranchised the numerous assignors of the United Railways Company, whose rights, privileges and franchises the latter has acquired) the City imposed certain obligations and conditions, amongst which were the payments of certain sums, the repair of streets between rails, etc. (hereinbelow more fully stated), which it is claimed were themselves an exercise by the City as against appellees of its power to impose license taxes, and therefore operated as contracts which exhausted the right to impose any further license taxes for the operation of the cars.

The main contention of the City of St. Louis, as set forth in its answer, is, on the other hand, that all of these considerations and payments called for in the special or franchise ordinances to the assignors of the United Railways Company were merely the contract price of obtaining the consent of the City required by the Constitution of the State, and Charter of the City, and were in no sense license taxes, and did not affect the power of the City to enact a license tax on each car.

The provision of the Missouri Constitution referred to is Article XII, Section 20 (Print. Rec., p. 38), as follows:

> "No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

The provision of the City Charter under which ordinance 21087 (and the former ordinance which it amended, which provided for a license tax of $25.00 per annum on each car)

was enacted, is found in Article III, Section 26, Clause 5 (see same set out in full below). This clause confers authority on the City "to license, tax and regulate" many kinds of business and vocations, and a multitude of different kinds of vehicles, conveyances, etc., all specifically enumerated, amongst which appear "street railroad *cars.*"

This clause in full is as follows (Charter Article III, Section 26, Clause 5; Print. Rec., pp. 42-43):

> "Fifth.—TO LICENSE, TAX AND REGULATE VARIOUS KINDS OF BUSINESSES, ETC.; FIX RATES FOR CARRIAGES, DRAYAGE, ETC.; REGULATE WIDTH OF TIRES—TO SUPPRESS CERTAIN OCCUPATIONS AND AMUSEMENTS.—To license, tax and regulate lawyers, doctors, doctresses, undertakers, dentists, auctioneers, grocers, merchants, retailers, hotels, boarding houses, tenement houses, office buildings, public buildings, public halls, public grounds, concerts, photographists, artists, agents, porters, runners, drummers, public lectures, public meetings and shows, real estate agents and brokers, financial agents and brokers, horse and cattle dealers, patent-right dealers, inspectors and gaugers, stockyard proprietors, examiners of titles, conveyancers, mercantile agents, insurance companies and insurance agents, bankers, banking or other corporations or institutions, telegraph companies or corporations, *street railroad cars,* livery and sale stables, hackney carriages, private carriages, barouches, buggies, wagons, omnibuses, carts, drays and other vehicles, and all other business, trades, avocations or professions whatever; to fix the rate for carriage of persons, and of wagonage, drayage and cartage or property, and regulate the width of the tires of all vehicles for heavy transportation; to license, regulate, tax or suppress ordinaries, hawkers, peddlers, brokers, pawnbrokers, money changers, intelligence offices, public masquerade balls, street exhibitions, dance houses,

fortune tellers, pistol galleries, lottery ticket dealers, corn doctors; lock, private and venereal hospitals, museums and menageries, equestrian performances, horoscopic views, lung testers, muscle developers, magnifying glasses, billiard tables or any other tables or instruments used for amusement; circuses, operatic, theatrical and other exhibitions; shows and amusements, saloons, beer houses, tippling houses, dram shops, and gift enterprises; and to suppress prize fights, coon fighting, dog fights, chicken cock fights, gaming or gambling houses; and to suppress bawdy and disorderly houses, houses of ill-fame and of assignation; to provide for and enforce the registration of all births, marriages or deaths; to license, tax, regulate or suppress all occupations, professions and trades not hereinbefore enumerated, of whatever name and character."

The provision of the City Charter, under which the numerous special or contract ordinances were enacted, which conferred authority upon the various street car lines assigned to and acquired by appellees, are found in Article X, Section 1-5 of the Charter (set out in Print. record, pp. 41-42) and are as follows:

"Section 1. AUTHORITY OF MUNICIPAL ASSEMBLY IN REFERENCE TO STREET RAILROADS—MAY SELL FRANCHISES OR IMPOSE A PER CAPITA TAX OR A TAX ON GROSS RECEIPTS.—The Municipal Assembly shall have power by ordinance to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right of way, or regulating and controlling them after their completion; and also shall have power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to im-

pose a per capita tax on the passengers transported, or an annual tax on the gross receipts of such railroad, or on each car, and no street railroad shall hereafter be incorporated or built in the City of St. Louis except according to the above and other conditions of this Charter, and in such manner and to such extent as may be provided by ordinance.

Sec. 2. MAY REGULATE RUNNING OF CARS AND RATES OF FARE AND TAX PROPERTY.—The Assembly shall have power to regulate the time and manner of running cars, and the rates of fares on street railroads now or hereafter to be built, and the sale of tickets and exchange therefor between the several companies and to tax the property of street railroad companies in such manner as may be provided by law.

Sec. 3. SURRENDER OF FRANCHISES, HOW EFFECTED.—Any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indisposition, and surrender thereby all their chartered rights or franchises, in such manner and under such terms and conditions as may be provided by ordinance.

Sec. 5. COMPANIES TO KEEP STREET BETWEEN RAILS IN REPAIR.—Street railroad companies shall keep the street between the rails, and to the extent of twelve inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails shall be of the same material as the street itself, and the Municipal Assembly shall provide by ordinance that bond or other security shall be given by the several companies, conditioned for a compliance with the provision of this section."

And in this connection we may refer to the Charter, Article III, Section 26, Clause 11, which confers general power on the city (Print. Rec., p. 42):

"Eleventh.—TO PROTECT RIGHTS OF CITY IN CORPORATIONS—GRANT, REGULATE AND REPEAL RAILWAY

FRANCHISES—FREE PASSES ON STREET RAILWAYS PROHIBITED.—To take all needful steps in and out of the State, to protect the rights of the city, in any corporation in which the city may have acquired an interest; to have sole power and authority to grant to persons or corporations the right to construct railways in the city, *subject to the right to amend, alter or repeal any such grant in whole or in part,* and to regulate and control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles; but every right so granted shall cease, unless the work of construction shall be begun within one year from the granting of the right, and be continued to completion with all reasonable practical speed, and it shall be the cause of forfeiture of the rights and privileges derived from the city, of any railroad company operating its road only within this city, which shall allow any person to ride or travel on its road gratuitously or for less than usual price of fare, unless such person be an officer or employe of such company."

The numerous special or right-of-way ordinances by which the respective independent street railway companies (which were subsequently consolidated or merged into the United Railways Company as common assignee) were originally authorized to operate in the City of St. Louis, are set out in full in the record (Print. Rec., pp. 54-136).

These are the ordinances which the appellees (the aforesaid assignee thereof) claim to contain the clauses which are alleged to be an exercise of the City's charter power to license and tax street cars, and that hence that power was thereby exhausted as to appellees, so that when subsequently ordinance 21,087, imposing a license tax, was enacted, it is alleged to operate as an impairment of the contract-ordinances; or, differently stated, that the appellees claim to be exempted from the operation of ordinance 21,087 because of

the terms of said special ordinances relating to the respective assignor companies.

It is therefore essential, for a proper understanding of this cause, to set out such provisions of these numerous ordinances as may bear on this contention.

The granting part of the said franchises or rights-of-way conferred thereby is, in nearly all instances, substantially or literally, to the respective company in question "to operate, maintain and construct," or "to lay down, construct, operate and maintain," or "to reconstruct its tracks and maintain and operate its railway thereon," etc., over certain designated streets.

These franchise privileges are conferred upon certain conditions and burdens imposed in these ordinances, the compliance with which complainants say exempts them from paying license-taxes, but which the ordinances say are assumed by complainants (or their respective assignors) as a consideration for the franchise rights conferred.

These burdens consist of payments of certain percentage of the year's receipts, or fixed sums payable each year, and also the repair of the streets within the tracks, limit of fare to be charged, and similar conditions hereinbelow specifically set out.

An examination of these ordinances shows that such burdens (particularly payment of fixed amounts to the City per annum, or percentage of receipts) are expressed to be assumed by the grantees *"in consideration of the rights, privileges and franchises hereby granted"* or "rights and franchises granted in this ordinance" (or similar words), etc. Such is the language in the following ordinances, set out in the bill and printed agreed statement, to-wit:

Ord. 11,528, sec. 5, p. 55 of printed rec. (Citizens' Ry. Co.).

Ord. 19,352, sec. 8, print. rec. p. 52 (Central Traction or United Railways).

Ord. 17,185, sec. 5, print. rec. p. 63 (Southwestern).

Ord. 14,089, sec. 6, print. rec. p. 91 (Southern).

Ord. 14,837, sec. 2, print. rec. p. 93 (Southern Extension).

Ord. 17,693, sec. 7, print. rec. pp. 97-98 (Southern Extension).

Ord. 19,429, sec. 6, print. rec. p. 107 (Lindell Consolidation).

Ord. 14,182, sec. 3, print. rec. p. 116 (St. Louis Ry.).

Ord. 17,196, sec. 1, print. rec. p. 117 (St. Louis Ry. Extension in time of franchise).

Ord. 17,021, sec. 9, print. rec. p. 124 (Union Dep. Ry.).

Ord. 18,049, sec. 9, print. rec. p. 128 (Union Dep. Ry.).

Ord. 17,047, sec. 7, print. rec. p. 133 (Grand Ave. Ry.).

Ord. 18,047, sec. 7, print. rec. p. 135 (Jefferson Ave. Ry.).

See, also, Ord. 19,738, sec. 5, print. rec. p. 148 (Complainant, Transit Co.).

The said burdens "in consideration" of which the franchises were conferred, are to the effect that "the said company shall pay to the City of St. Louis," certain sums, which are either a fixed amount per annum (in most instances increasing per year as the franchise ages), or which are a certain percentage of gross receipts; such (either one or the other) is the case in the following ordinances, to-wit:

Ord. 19,352, sec. 8, print. rec. p. 52 (Central Traction or United Railways, one of the complainants here).

Ord. 19,738, sec. 5, print. rec. pp. 148 and 60 (St. Louis Transit lines, the other of the complainants here).

Ord. 11,528, sec. 5, print. rec. p. 55 (Citizens' Ry.).

Ord. 17,185, sec. 5, print. rec. p. 63 (Southwestern).
Ord. 14,837, sec. 2, print. rec. p. 93 (Southern).
Ord. 17,693, sec. 7, print. rec. pp. 97-98 (Southern).
Ord. 19,738, sec. 5, print. rec. p. 148 (Cass Ave. & F. G.).
Ord. 17,021, sec. 9, print. rec. pp. 124-125 (Union Dep. R. R. Co.).
Ord. 16,639, sec. 5, print. rec. p. 77 (Cass Ave. & F. G.).
Ord. 14,089, sec. 6, print. rec. p. 91 (Southern).
Ord. 12,477, sec. 3, print. rec. p. 113 (St. Louis R. R.).
Ord. 14,182, sec. 3, print. rec. p. 116 (same).
Ord. 17,196, sec. 1, print. rec. p. 117 (Peoples').
Ord. 18,049, sec. 9, print. rec. p. 128 (Union Dep. Ry.).
Ord. 19,738, sec. 5, print. rec. p. 145 (Transit).
Ord. 17,047, sec. 7, print. rec. p. 133 (Grand Ave.).
Ord. 18,047, sec. 7, print. rec. p. 135 (Jefferson Ave.).
Ord. 19,429, sec. 6, print. rec. p. 107 (Lindell consolidation).

The above particularly are the clauses calling for the payments claimed to be in lieu of, or as exempting from, the license tax in question, and are the provisions relied upon by complainants, and special attention is directed thereto.

In some of these ordinances above specified there appear further conditions, for instance, that such payments are to be "in addition to all taxes, as now or hereafter prescribed by law," etc. So (or in words to same effect) in:

> Ord. 14,089, sec. 6 (print. rec. p. 91), 12,477, sec. 5 (print. rec. p. 113), 14,182, sec. 3 (print. rec. p. 116), 17,196, sec. 1 (print. rec. p. 117), 18,049 (print. rec. p. 128), and see also ord. 19,738, 17,047, 18,047; and in 19,429 (Lindell, print. rec. p. 107) the language is that the powers are conferred, "provided, however, upon the following considerations, terms, conditions and agreements, viz.: . . . Second,

> said Lindell Ry. Co. shall, in lieu of all payments, now required of it under any and all previous ordinances, and such as are now, or may hereafter by ordinance passed be required of any railroad company whose tracks it is hereby authorized to acquire, etc., on the first day of (various months) pay to the City of St. Louis, etc. (various sums) which several sums said Lindell Ry. Co., its successors and assigns, in consideration of the rights and privileges granted by this ordinance hereby agrees to pay to the City of St. Louis, at the times . . . " etc.

While in at least one ordinance permitting consolidation of roads, it is explicitly stipulated, concerning the amounts required to be paid in the way of certain percentages of the gross receipts to the City (varying by gradual increase, as the franchise ages, from one and one-half per cent in 1893 up to three and one-half per cent from 1920 to 1925) that such "payments shall be in addition to all other taxes or license fees now or hereafter prescribed by law."

> So in ord. 16,639, sec. 5, print. rec. pp. 77-78, which ord. authorizes the Cass Avenue and Fair Grounds Ry. Company (which is one of the roads thereafter in turn acquired by the United Railways Co.) to acquire and merge into it the Northern Central line and Union line.

Other, though less important, of the burdens imposed, are that the companies keep the space between the rails and 12 or 18 inches on each side, paved and repaired. We believe every one of the ordinances (or nearly so) contains this provision.

And in many cases it is stipulated that work be begun on the tracks, or completed, within a certain time. So in ordinances:

19352, sec. 5, print. rec. p. 51;
19738, sec. 2, print. rec. pp. 147, 60, 74;
17185, sec. 7, print. rec. p. 64;
8701, sec. 6, print. rec. p. 65;
13872, sec. 7, print. rec. p. 71;
19738, sec. 2, print. rec. pp. 71-72;
16639, secs. 8, 9, print. rec. p. 78;
10824, sec. 3, print. rec. p. 87;
17693, sec. 12, print. rec. pp. 98-99;
19429, sec. 5, print. rec. p. 106;
4371, sec. 7, print. rec. p. 110;
18049, sec. 8, print. rec. p. 127;
17047, sec. 4, print. rec. p. 131.

And in others that the fare charged be not in excess of a certain sum, usually five cents. So in these ordinances:

No. 19352, sec. 5, print. rec. p. 51;
No. 11528, sec. 3, print. rec. p. 55;
No. 19738, sec. 8, print. rec. pp. 62, 148, 75;
No. 17185, sec. 4, print. rec. p. 63;
No. 16639, sec. 4, print. rec. p. 77;
No. 10824, sec. 2, print. rec. p. 87;
No. 14837, sec. 6, print. rec. p. 95;
No. 17693, sec. 13, print. rec. p. 99;
No. 19429, sec. 6, print. rec. p. 106;
No. 12477, sec. 8, print. rec. pp. 114-115;
No. 17021, sec. 4, print. rec. p. 121;
No. 17047, sec. 4, print. rec. p. 132;
No. 18047, sec. 5, print. rec. p. 134;
No. 4371, sec. 4, print. rec. p. 110.

In some cases the ordinances say that "it is expressly understood that by the acceptance of the provisions of this

ordinance said company agrees to conform to all present and future charter provisions of the City of St. Louis, and to all general ordinances now existing, or hereafter to be enacted, respecting the governing of street railways." So in ordinances:

No. 17185, sec. 6, print. rec. pp. 63-64 (Southwestern Ry.).

No. 16639, sec. 14, print. rec. p. 79 (Cass Ave and Fair G. Ry.).

No. 18047, sec. 4, print. rec. p. 135 (Jefferson Ave. Rd. Co.).

See, also, to similar effect, the following:

No. 12973, sec. 3, print. rec. p. 92 (Southern Ry.).

No. 14837, sec. 5, print. rec. p. 95 (Southern Ry.).

No. 17693, sec. 3, print. rec. p. 96 (Southern and Southern Electric).

So also the complainant, St. Louis Transit Co., in ordinance 19,738, sec. 10, approved March 20th, 1899, and the acceptance thereof filed April 3rd, 1899, itself expressly agrees that "it will comply with all the terms and conditions of this ordinance, and all valid general ordinances now in force or that may hereafter be passed in reference to street railways." (Print. Rec. p. 149.)

And in yet other instances the ordinances contain the stipulation that "said company shall hereafter pay such license as may be prescribed by ordinance, and be subject to taxes, and assessments on all property belonging to them in like manner as other corporations." So in ordinances:

8701, sec. 5, print. rec. p. 65;

4371, sec. 6, print. rec. p. 110.

The usual penalty for failure to observe any of these conditions and terms is that the same shall "cause the forfeiture of all the rights, privileges and franchises granted," etc.

The Court below construed these special or right-of-way ordinances as being in themselves an exercise of the taxing power (giving in clause 5, sec. 23, Art. III, of the City Charter), and that the conditions therein as above set forth were in fact a license tax, and being contracts, upon acceptance of the companies, could not be added to by another license tax, and hence held ordinance 21,087 to be void as against the complainants. (See opinions print. rec. 155-160.)

Being dissatisfied with the correctness of this decision, for the reasons as indicated in the assignment of errors next herein set out, the City of St. Louis appeals to this Court for a reversal of the decree and asks for the dismissal of the bill.

ASSIGNMENT OF ERRORS.

The formal assignment of errors filed and presented by the appellant City of St. Louis (omitting caption, etc.), is as follows (print. rec. pp. 152-153), to-wit:

Comes now the City of St. Louis, defendant in the above entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons:

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21,087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis impaired the obligations of any of the special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to con-

struct, operate and maintain street railways in said City, precluded the defendant, the City of St. Louis, from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis, by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction, maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21,087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license-tax by virtue of the special franchise ordinances granting it, or its assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant, The City of St. Louis, prays that the decree of the Circuit Court be reversed, and that said Court be directed to enter a decree in favor of said defendant.

SPECIFICATIONS OF ERROR.

As indicated in the above formal assignment of errors, appellants contend that the lower court erred in these respects:

(1) It misconstrued the special, or franchise, ordinances or rights-of-way (under which complainants and their predecessors in title, which form the constituent lines of complainants, derived their authority from the city) in construing the same as being in themselves an exercise of the city's right to impose a license tax on street cars under the Charter Article III, clause 5 of section 26, instead of merely terms and conditions for the grant, under the Charter Article X and the State Constitution Article XII, section 20.

(2) In holding the city had, in said special ordinances, contracted away, or attempted to contract away, its power to levy a license tax on street cars.

(3) In holding that if it had so attempted, that it could legally exempt complainants from license taxation in that manner.

(4) In holding that ordinance 21,087 was void because to recognize the city's right to enact it would enable the city to abuse such power, although there was no such abuse shown or decided to exist in the case before the court; in other words, in annulling the city's *power* to tax cars because it *might* abuse the same.

(5) After erroneously holding the conditions of said ordinances to be equivalent to providing for license taxes, in further erroneously holding that, regarded as license taxes, the city could not alter, amend or repeal the same.

(6) In holding that the city could not and did not exact the conditions and terms pleaded in the special or franchise ordinances without trenching upon or exhausting its taxing power.

(7) In holding that the city could contract away its taxing power at all.

(8) In holding that even if it could and did exempt the assignors of complainants, that such immunity passed to the latter.

POINTS AND AUTHORITIES.

I.

General Power to Enact a License Tax on Cars.

It must be conceded that under the Charter of the City of St. Louis (derived from the Constitution itself: Const. Missouri, Art. IX, Secs. 20-25), that City had the broad and specific power, in general, to enact ordinance 21,087 (set out Print. Rec. p. 43) imposing a license tax on all street railway cars operated within its limits, as well as to enact the prior ordinance thereby replaced (set out Print. Rec. p. 144), which had fixed the amount at $25.00 per car, per annum. The power to tax as well as to license is conferred in express terms.

Charter of St. Louis, Art. III, Sec. 26, clause 5 (Print. Rec. pp. 42-43), conferring power to license, tax and regulate street railway cars.

Springfield vs. Smith, 138 Missouri 645, 654, *et seq.*

Kansas City vs. Corrigan, 18 Missouri Appeals, 206.

27 Am. & Eng. Enc. Law (2d Ed.), "Street Railways," p. 52.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365.

See further on the general power of cities to impose license taxes in Missouri:

St. Louis vs. Weitzel, 130 Missouri 600, 619-620.

Aurora vs. McGannon, 138 Missouri 38, 45.

St. Louis vs. Green, 7 Missouri Appeals, 468, 474. 478, affirmed on this point in 70 Missouri 562.

See also, cases *infra* cited in Point II, Sub (*c*).

Obviously the fact that a portion of the route of the company goes beyond the city limits can make no difference.

San Jose vs. S. J. Ry., 53 California, 475.
Newport News Ry. vs. Newport News, 100 Virginia, 157.
Wiggins Ferry Co. vs. E. St. Louis, 107 U. S. 365.

In fact, if there were no authority in the State (acting here through its delegated agent, the City) for the imposition of this tax, the foundation of this Court's jurisdiction would be gone, and the bill would have to be dismissed on that ground.

Savannah, etc., Ry. vs. Savannah, 198 U. S., loc. cit. 396.

It follows that since such license tax ordinance as a general proposition is valid, the appellees are required to pay the same upon their cars, unless they can show affirmatively some valid legal reason why they are excepted from its application. This they seek to do by the claim (1) that the right-of-way or special ordinances conferring upon them and their assignors or predecessors in title the city's consent, of themselves impose such license-tax, which cannot hence be increased or altered by ordinance 21,087 without their consent; or (2) that said right-of-way ordinances should be construed as exempting appellees from all license taxes.

These are ultimately the only two points involved in this case.

II.

An examination of the numerous franchise or right-of-way ordinances to the predecessors of appellees, demonstrates that the conditions therein recited "in consideration"

of which the grants were made, are conditions annexed under Article X of the City Charter, and assumed by the street car companies in order to obtain the City's initial consent, necessary under the State Constitution, and cannot be construed as an exercise of the power conferred in the City Charter in Art. III, Sec. 26, Clause 5, to tax street cars, nor as an exemption from such taxes.

(*a*)

There can be no question as to the *right* or propriety of the City to impose just such terms and conditions before giving its consent as it chose to impose in the said right-of-way ordinances, to-wit: payment of certain fixed stipulated sums, or percentage of gross receipts increasing as the franchise ages, paving and repair of space between the rails, rate of fare, time for completion of work, etc.; all of such provisions stand upon the same basis as to the City's power, but vary in particularity with each respective ordinance.

Whilst it is true in one sense that all Missouri corporations, including street railways, derive their franchises or right to exist originally from the State, acting through the General Assembly under general law, yet the rights-of-way conferred by the City upon street railroads are in effect equivalent to franchises, because unlike other corporations, under the Constitution, no street railroad can be granted the right "to construct and operate a street railroad within any city, town, village, or on any public highway without first acquiring the consent of the local authorities, nor can the franchise so granted be transferred without similar assent."

> Constitution of Missouri of 1875, Art. XII, Sec. 20 (Print. Rec., p. 38). Note that in both the Constitution and Charter, an ordinance conferring the City's consent is termed a "franchise."

See also as to such power being equivalent to a franchise:

Blair vs. Chicago, 201 U. S. 400, loc. cit., 457-460;

State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 190.

And the Charter of St. Louis also expressly provides that in granting the right-of-way or franchise to a street railway the City "as a consideration therefor, may impose a per capita tax on passengers transported *or an annual tax on gross receipts,*" etc.

Charter of St. Louis, Art. X, Sec. 1. (Print. Rec., p. 41.)

Now these provisions of Art. X of the Charter are the very terms exercised in the contract ordinances or rights-of-way ordinances (set out Print. Rec., 46 to 149, a synopsis of which is given in our statement *ante*, p. 20-25), which appellees rely on. And this Art. X of the Charter plainly refers to conditions to be annexed to the City's consent (as required by Art. XII, Sec. 20, of the Constitution, *supra*) to a street railway franchise, and these conditions when enacted in the franchise-ordinances and accepted by the companies are the price of such consent, *and are limited to that.*

But this Art. X of the Charter and such conditions annexed to obtaining a franchise thereunder and under the Constitution, is wholly independent of the power to impose a *license tax on street cars* given under clause 5, of sec. 26, of Art. III of the Charter, *supra.*

This distinction goes to the core of the case.

If observed, it follows that the consent conditions to a franchise can not operate as a license-tax on cars.

(*b*)

Under the Constitutional and Charter provisions

above cited, the power given to the City is not limited to a mere "yes" or "no" in granting the right-of-way or franchise ordinances, but it may impose such conditions upon its consent as it sees fit.

St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, loc. cit. 252-253.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 457-460.
Allegheny City vs. Street Railway, 159 Pa. St. 411.
27 Am. & Eng. Enc. L. (2nd Ed.) "Street Railways," pp. 21-22.

See also:
Ashley vs. Ryan, 153 U. S. 436, loc. cit. 441-445.

(c)

It is therefore obvious that these "considerations" are but the bonus or price paid to the City for its consent to place the street railway companies upon the same plane to do business that other corporations have without any such consent. So far the ordinances are contractual and once accepted are binding as contracts.

But this has nothing to do with the further power of the City to impose a license-tax on street cars, as on any other conveyance using the streets, which power is not contractual, and exists by virtue of a totally different clause of the Charter. There may be a license, and a tax on the license.

One power is to contract, the other is to tax. The lower court ignored this distinction, or rather held that there was none such. While burdens agreed upon in such right-of-way ordinances are sometimes erroneously or inaccurately called a "tax," in the sense of being a burden, they are in law not included under provisions relating to either general taxes or license taxes.

Metropol. Street Ry. vs. N. Y., 199 U. S. loc. cit. 44-45, 46.

Brooklyn City Ry. vs. N. Y., 199 U. S. 48, loc. cit. 50.

Mayor, etc., vs. Broadway Ry., 97 N. Y. 275, 283-284.

Newport, etc., Railway vs. Newport, 100 Virginia 157, loc. cit. 162.

City of Newport vs. Street Ry., 89 Ky. 29.

It has therefore been uniformly held that such contractual obligations as are in question in this case, assumed by street railway companies in obtaining municipal right-of-way ordinances or franchises "to operate, construct and maintain" street railways, under provisions practically like those here in issue, are never construed as exempting or relieving the street car companies from the imposition of license taxes by duly enacted ordinance of such municipality, even if not imposed until after the acceptance of the companies' franchise ordinances.

There is not a word in any of the ordinances relied upon by appellees that hints at a surrender by the City of its power to tax street-cars, or to exempt them from such tax, or grant an immunity therefrom.

In construing the ordinance of a City conferring upon a street railway company the authority to construct and operate a street railway, the right of the City to exact license fees will not be denied unless such right has been expressly surrendered in the ordinance. Such grants are construed strictly against the corporation companies, and liberally in favor of the public; silence is negation, and doubt is fatal to the claim. There is no such surrender by a grant to

operate, construct and maintain a street railway, though given upon compliance with certain conditions and payments. And when the contract ordinance between the City and the company does not in terms dispense with the payment of a license tax, the rights of a company are not impaired by a subsequent ordinance requiring such payment.

Springfield vs. Smith, 138 Missouri, 645, 655.
Wyandotte vs. Corrigan, 35 Kansas, 21.
New Orleans City Ry. vs. New Orleans, 143 U. S. 192.
Railway Co. vs. Philadelphia, 101 U. S., 528.
Met. Street Ry. Co. vs. New York, 199 U. S. 1, loc. cit. 37.
Savannah Ry. vs. Savannah, 198 U. S., 392, 398.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 471-473.
State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 194.
Newport, etc., Ry. vs. Newport, 100 Virginia, 157.
New Orleans vs. Orleans Ry. Co., 42 La. An. 4.
New Orleans vs. New Orleans Ry. Co., 40 La. An. 587.
San Jose vs. S. J. Railway, 53 Cal. 475, 481.
State vs. Herod, 29 Iowa, 123.

See also:

Rochester Ry. vs. Rochester, 205 U. S. 236, 248.
Cleveland Electric Ry. vs. Cleveland, 204 U. S. 116, 130.

If the companies wished or intended to have an exemption of any kind from taxation, or felt it was necessary for the profitable working of their business, they should have required a provision to that effect in their charters.

Memphis Gas Co. vs. Shelby, 109 U. S. 398, followed in New Orleans Ry. vs. New Orleans, 143 U. S. loc. cit., 195; Metropolitan Street Ry. vs. New York Tax Comrs., 199 U. S. loc. cit. 42, and other cases.

Newport, etc., Ry. vs. Newport, 100 Virginia loc. cit. 163.

See also cases, *supra*:

(*d*)

If there were doubt as to whether the special or franchise ordinances here in question should be construed to exempt or relieve the railway companies from payment of the general license tax, such doubt would be removed by the interpretations placed thereon by the companies themselves, which have always recognized the obligation to pay a license tax independently of the contract-ordinances, and which paid the general license-tax fee of $25.00 per car, and continued so to do until the amendment of that general ordinance by ordinance 21,087 in 1903. Obviously if the latter was an attempted impairment of the obligations of the City under the contract ordinances, so was the $25.00 tax ordinance. The amendment did not change the nature of the payment required, but merely the amount and method (which latter are matters not before the Court at this time). If the claim now made, that the special payments under the contract-ordinances worked immunity from a license-tax were correct, it was just as much so when the license-tax was fixed at $25.00 per car, which, however, the companies all paid. If the present ordinance of 1903 is void, so was the amended one, yet the validity of the latter is admitted by the annual payments made for half a century thereunder by the predecessors or assignors of complainants, and indeed, by the latter themselves for years, since their organization.

It is a well-established rule (applicable in favor of a municipality as in any other case) that in case of ambiguity in the language, the contemporaneous interpretation placed upon a contract (though it be an ordinance-contract with a City) by the parties themselves, is entitled to great if not controlling influence, especially if continued over a long period of time.

St. Louis Gaslight Co. vs. St. Louis, 46 Missouri, 121, 127 *et seq.*

St. Louis vs. Laclede Gas Light Co., 155 Missouri, 1 l. c., 19.

Dist. of Col. vs. Gallagher, 124 U. S. 505.

Insurance Co. vs. Dutcher, 95 U. S. loc. cit. 273.

Topliff vs. Topliff, 122 U. S. 121, loc. cit. 131.

(*c*)

Nor is it to be overlooked as corroborative of the plain construction contended for by the City, that while on the one hand there is not an intimation upon which appellee can puts its fingers, in any one of the numerous franchise ordinances, which expressly or impliedly *surrenders* the right of the City to tax street cars, yet there are distinct assertions which slipped into some of these ordinances which show the thought that the right to impose license taxes is not involved in them, and which require the percentage payments on gross receipts (claimed by appellees to be of themselves, or to exempt them from license taxes) to be paid, and also "such company shall hereafter pay such license as may be prescribed by ordinance," or to be paid in addition to license fees now or hereafter prescribed by law. Such provisions are directly contradictory of the contention here urged by the railways, and while not contained in many ordinances, yet their existence at all, in any, is significant of the light

in which such percentage payments are regarded, to-wit, as in no way being of themselves license taxes, otherwise they would not be expressed as paid apart therefrom, or in addition thereto.

Ord. No. 8701, Sec. 5 (Print. Rec., p. 65; *ante,* Statement p. 25).

Ord. No. 4371, Sec. 6 (Print. Rec., p. 110; *ante,* Statement p. 25).

Ord. 16639, Sec. 5 (Print. Rec., pp. 77-78; *ante,* Statement p. 23).

(*f*)

Again, the complainants have no standing here because *they have agreed to pay this very tax in issue in the contract-ordinances.*

Many of the predecessors in title of the complainant United Railways Company, and the co-complainant the St. Louis Transit Company on its own account, have in the consent-ordinances or franchise from the City, expressly agreed to "comply with all general ordinances now [then] in force or which may hereafter [thereafter] be passed in reference to street railways." (See several different ordinances of companies so providing, which are enumerated and designated in appellants' Statement, *ante,* pp. 24-25, with citation to the respective pages to-wit, pp. 149, 63-64, 79, 135, 92, 95 and 96, of the printed record, where said provisions appear.)

There was such a general license-tax ordinance then in force; and the present one is such a general ordinance, amending the former.

These provisions above quoted from the franchise ordinances of themselves amount to a contractual acceptance of the general ordinance in force when all of these contract-

ordinances were enacted and accepted, imposing a license-tax of $25.00 per car, and also are an executory acceptance of the subsequent general one mill ordinance here in issue, amending said prior ordinance.

And this is true, even if in the absence of such agreement incorporating them by reference the said license-tax ordinances would be inapplicable to such companies because operating as an impairment of contract; and in fact even if they were wholly void (which of course is not the case, being here clearly within the City's general power).

Interstate Consolidated Street Ry. vs. Massachusetts, 207 U. S., 79.

III.

If the City had attempted to barter away its power to impose the license-tax in question, in the contract-ordinances conferring its consent, as claimed by appellees, such action would have been void as contrary to law, for either of several reasons.

As shown above in point II, we think that a construction of the right-of-way ordinances upon proper legal principles, will exclude the possibility of appellees being correct that they were intended to be relieved from payment of license-taxes on cars, and we think it will not be necessary to go further. But, for the sake of the argument only, we contend that if the railways were right in that contention, it would not avail them, for such attempted exemption would be void, whether (1) the City attempted expressly to exempt the railway companies, or (2) impliedly imposed a license-tax by providing for the percentage payments to be taken in lieu of such tax, which really amounts to the same thing.

(*a*) The City cannot bind its hands not to tax, or to exempt from taxes.

The sovereign State perhaps has the power to enact a binding contractual exemption from taxation, were it not prohibited by its constitution, which, however, it is in Missouri: Const. 1875, Art. X, secs. 2, 6 and 7. The City of St. Louis is specially authorized by the Constitution to provide in its charter for levying taxes for municipal purposes, in such manner as is not inconsistent with the constitution and laws. (Const. Art. IX, sec. 21; St. Louis vs. Bircher, 76 Mo. 431; St. Louis vs. Sternberg, 69 Mo., 289, 298.)

But taxation (without which power the municipality ceases to exist) is an attribute of sovereignty that the legislature of this State has not, in fact, cannot, authorize a municipality to contract away, any more than the police power. The legislature cannot delegate a power denied to itself by the Constitution. A contract by a city, attempting it, is to that extent simply ultra vires and void.

Springfield vs. Smith, 138 Missouri, 645 (applying that rule to a street car tax exemption).

State vs. Railroad, 75 Missouri, 208.

Savannah, Thunderbolt, etc., Ry. Co. vs. Savannah, 198 U. S., 392.

People ex rel. Street Ry. vs. Tax Com'r., 174 N. Y. 417, loc. cit. 448, affirmed in 199 U. S. 1.

That a license fee for revenue is a *tax* is settled in Missouri:

St. Louis vs. Spiegel, 75 Missouri, 145.

St. Louis vs. Spiegel, 90 Missouri, 587, loc. cit. 591.

See also:

Springfield vs. Smith, *supra.*

(*b*) If the argument were sound (which it is not) that the City had exercised and exhausted its license-taxing power in imposing the conditions of percentage payments on gross receipts, or certain fixed sums, which should be regarded as annual license-taxes on cars, such an attempt by the City would be void for the additional reason that there would be no uniformity in such a tax, but a different, special and invidiously discriminating license-tax for each and every of the many independent constituent lines of the United Railways Company as assignee, and through which it holds. The City would have no power arbitrarily to charge one company or individual one price by way of a license, and another in the same business, another price. The tax must be uniform upon all within the same class. (Const. Missouri, Art. X, sec. 3; print. rec., p. 39.) Such a tax must be by general law, substantially uniform in its operation throughout the City, and not by specific, unequal, special, single and dissociated provisions applicable to different individual cases. If so it would be void.

Kansas City vs. Corrigan, 18 Missouri Appeals, 206, 215.
St. Louis vs. Spiegel, 90 Missouri, 587.
St. Louis vs. Spiegel, 75 Missouri, 145.
Aurora vs. McGannon, 138 Missouri, 38, 48.
Railway Co. vs. Philadelphia, 101 U. S., l. c. 537.

See also below under point VI, subdivision (b).

We do not claim it is void, but only that such an absurd result would follow if complainants' contention were sound. No construction, involving such results, will be sustained.

But even if void, then, since these are the conditions under which the railways are authorized to do business at all, it

follows they would have no authority to operate whatever, and hence have no standing in court. An essential condition being void, the whole ordinance would be void.

So held in St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, l. c. 253.

See also Allegheny City vs. Ry., 159 Pa. St. 411, loc. cit. 418-419.

IV.

The immunity from taxation burdens would not pass to complainants.

Moreover, such an exemption (if created) even when the main grant is of rights, privileges and franchises to the grantee and its successors and assigns (but with no mention of "immunities" or its equivalent) will not pass with an assignment or transfer to the assignee or transferee.

Rochester Ry. vs. Rochester, 205 U. S. 236, collating the authorities.

Phoenix Ins. Co. vs. Tennessee, 161 U. S. 174, 180, *et seq.*

Keokuk Ry. vs. Missouri, 152 U. S. 301, 307, *et seq.*

Railroad vs. Georgia, 98 U. S. 359.

Turnpike Co. vs. Sanford, 164 U. S. 578, 586, *et seq.*

Railroad vs. Pendleton, 156 U. S. 667, 673.

V.

The right to alter, amend or repeal.

(*a*) Again, even if the argument were sound (which of course it is not) that the recited considerations for the right-of-way franchises were to be treated as if they were license

taxes, or operated to exempt from the City's charter power to tax street cars, then treating such provisions as license-tax burdens, the rights conferred would still in that respect be subject to the further charter provision (in force at the times and since these franchise ordinances were enacted) that every such grant is taken "subject to the right to amend, alter or repeal any such grant in whole or in part."

Charter of St. Louis, Art. III, sec. 26, clause 11 (print. rec., p. 42). That this clause applies to street railways is obvious (and is so recognized in State ex inf. vs. Lindell Ry., 151 Mo. loc. cit. 181, where it is cited in discussing the street railway laws of St. Louis).

Conceding for the argument that the franchises of these companies amount to a contract of exemption, yet since at the time of the adoption thereof there existed the paramount power to repeal, alter or amend, the alleged exemption or relief from future license-taxes may be revoked without impairing the obligations of the contract, because the paramount reserve power, which is treated as if embodied in the contract, deprives the contract of its irrevocable character, at least with respect to such provisions as relief from license-taxation.

Railway Co. vs. Philadelphia, 101 U. S. 528, loc. cit. 540.

Fair Haven R. R. Co. vs. New Haven, 203 U. S. 379, loc. cit. 388-389.

San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 308.

Interstate Consol. Street Ry. vs. Massachusetts, 207 U. S. 79.

State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.

Citizens' Bank vs. Owensboro, 173 U. S. 639, loc. cit. 644.

Street Railway Co. vs. Sioux City, 138 U. S. 93, loc. cit. 108.

Railroad vs. Georgia, 98 U. S. loc. cit. 365.

(*b*) A further important consideration is that at all times when any of the right-of-way ordinances were enacted which provide for the payments claimed to operate as immunity from the street car license-tax, the general ordinance existed, formed part of the charter of the railroads, and was in fact complied with, fixing a tax of $25.00 per annum on each car; and the City certainly had the right to amend such general ordinance by changing the amount, under its power to alter, amend or repeal any grant in whole or in part, even if it had not power to so do otherwise.

State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.

Fair Haven Ry. vs. New Haven, 203 U. S. 379, 388-389.

Stanislaus Co. vs. San Joachin Co., 192 U. S. 201, and cases there cited.

VI.

The Ordinance is Uniform.

(*a*) There is no merit in the contention that the ordinance denies complainants the equal protection of the law on the ground that it discriminates between street railroads and other public conveyances such as steam roads, automobiles, hacks, etc.

When a city having power to tax vehicles, trades, callings, etc., taxes alike all persons engaged in such business, such taxation is equal and uniform. Street railroads may be put in a class by themselves.

Metropolitan Street Railway vs. New York, 199 U. S. 1, 47.
Savannah Ry. vs. Savannah, 198 U. S. 392.
Aurora vs. McGannon, 138 Missouri, 38, 48.
St. Louis vs. Bowler, 94 Missouri, 630, 634.
Newport Ry. vs. Newport, 100 Virginia, 157, 161.
Armour Packing Co. vs. Lacy, 200 U. S. 226, 235.

(*b*) Neither is there anything objectionable in the form of this ordinance fixing the amount of the tax according to a graduated scale, instead of a fixed sum.

This phase is considered below under point VIII, where high authorities sustaining such form are cited.

(*c*) But while there is nothing in the argument that Ord. 21,087, wholly general in its provisions, is not uniform, the mere fact that such an argument is made accentuates and emphasizes how absurd it would be to regard each and every of the individual special or contract ordinances conferring the municipal franchises on complainants' assignors as license-tax provisions. See on this point *ante* under point III, sub-division (b).

VII.

The ordinance is not oppressive, unreasonable, or confiscatory. Neither can it be attacked in this case on that ground.

(*a*) The ordinance is certainly reasonable and fair on its face. There is no evidence that it is oppressive, confiscatory or unreasonable.

The State, acting through its delegated agent, the City, has a right to impose a license-tax on street cars for the use

of the streets, and burdening them with rails, etc., thereby requiring the street car companies (like others) to contribute to meet the burden of the City's government, in which they so largely share. A tax of one mill per day passenger is certainly not excessive in a metropolis of nearly three-quarters of a million people. If the car carries few passengers or remains largely unused, the tax is proportionally less; if jammed with passengers, then more—as it ought. As seen by the citations in point VIII, a tax graduated according to the earning power of the subject thereof, is to be recommended as an equitable adjustment.

(*b*) We fail to see any cogency in the main argument of the lower Court that if the City can impose a mill tax license, assumed to be two per cent of gross receipts (which, however, is erroneous because not allowing for receipts from other sources, such as running of ambulance and funeral cars, and U. S. mail cars, carrying expressage and freight, etc., as permitted to some of the lines: See for instance, Ord. 19,738, sec. 7), that then "It can exact 50 per cent or more, and of course can utterly destroy the value of complainant's property." The Court avowedly supposes a case not before it and argues the denial of all power because of possibility of abuse. The argument logically annuls the right of the City to impose any license tax on street cars, or for that matter on any other conveyance, business or subject of such a tax, as the possibility of abuse exists in any such case. It is sufficient answer that abuse is not present in this case.

This Court has long ago demonstrated the fallacy of that argument.

The possibility of the abuse of legislative power does not

disprove its existence. That possibility exists even in reference to powers that are conceded to exist.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.

Powell vs. Pennsylvania, 127 U. S. 678, loc. cit. 686.

Verdin vs. St. Louis, 131 Missouri 26, loc. cit. 130, per Sherwood, J., citing Powell vs. Pennsylvania, *supra.*

Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 295-296.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, loc. cit. 563.

The argument is in effect that to permit the State (through the City) to tax this company by a license-tax for the privilege granted by its charter, is to destroy that privilege. But the answer is that the company took the charter subject to the same right of taxation in the State that applies to all other privileges and all other property. If the companies wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business, they should have required a provision to that effect in their charters. The Constitution of the United States does not profess in all cases to protect from unjust and oppressive taxation

Met. St. Ry. vs. N. Y. Tax Com., 199 U. S. 1, loc. cit. 40.

New Orleans Ry. vs. New Orleans, 143 U. S. 192, 195.

Memphis Gas Co. vs. Shelby Co., 109 U. S. 398, 400.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, 563.

Newport News Ry. Co. vs. Newport News, 100 Virginia loc. cit. 163.

There is no presumption against the integrity of the Municipal Assembly; but on the contrary, the presumption favorable to that body is constantly indulged that it is actuated by fair considerations and is free from motives of oppression or wrong.

St. Louis vs. Fischer, 167 Missouri, 654, loc. cit. 663.

St. Louis vs. Howard, 119 Missouri, 47, loc. cit. 50.

Mich. Cent. Ry. vs. Powers, 201 U. S. 245, loc. cit. 295.

(*c*) Neither should this Court, in this proceeding, even consider the question whether the tax be excessive if it has been bona fide enacted, and is not a mere disguise to destroy the privileges conferred in the franchises. Given the power to levy the tax or fix the amount of the license, the argument that it operates oppressively is a consideration which is properly addressed to the municipal assembly and not the Courts.

St. Louis vs. Weitzel, 130 Missouri, 600, loc. cit. 620.

St. Louis vs. Green, 7 Missouri Appeals, 468, 478-479 (affirmed on this point in 70 Mo. 568).

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.

Kehrer vs. Stewart, 197 U. S. 60, loc. cit. 69-70.

St. Paul vs. Colter, 12 Minn. 41, 49.

Kansas City vs. Trieb, 76 Missouri Appeals, 478.

Home Ins. Co. vs. N. Y., 134 U. S. 594.

21 Am. & Eng. Enc. L. (2nd Ed.), p. 790.

tory or unreasonable.

San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 309-310.

VIII.

The form of the car tax is unobjectionable.

Ordinance 21,087 amended the former ordinance so as to substitute for a fixed annual tax of $25.00 per car, a sum equal to one mill per pay passenger carried. But the tax is still a license-tax *on each car;* it is not a demand for a portion of the fare collected; it is not a tax on the receipts. These may vary, be diminished or increased—the tax never. It is graduated by a fixed method according to the number of persons carried. In the new ordinance the amount is determined by a method uniform and equal in its application to each case. The graduated method is fairer, more equitable, less objectionable. At all events the method is purely one of legislative discretion.

The State and Federal Courts have often sustained this method of graduated tax and recommended it.

Clark vs. Titusville, 184 U. S. 329, loc. cit. 333-334.

Society for Savings vs. Coite, 6 Wall. (U. S.) 594, loc. cit. 608.

Maine vs. Grand Trunk Ry., 142 U. S. 217, l. c. 228-229.

Home Ins. Co. vs. N. Y., 134 U. S. 594, loc. cit. 600.

Aurora vs. McGannon, 138 Missouri, 38.

Amer. Express Co. vs. St. Joseph, 66 Missouri, 675, loc. cit. 680-681.

See also Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 301.

IX.

The dignity of the assailed ordinance as a legislative enactment.

It is also to be remembered that the construction of the lower Court, if sustained, and that asked by appellees, would work a practical annullment of the ordinance, as if it were void.

The Courts will not hold a legislative enactment void except in case of compelling necessity.

The State Constitution provides for the organization of the City of St. Louis by Charter; the Charter provisions are direct delegations of State power to the municipality, and the ordinances enacted by the Municipal Assembly in pursuance thereof, so long as they are in the legitimate sphere of municipal affairs, are entitled to the same force and effect and the same intendments and presumptions of validity as are accorded to enactments of the General Assembly. This is especially true of street railway legislation in St. Louis.

State ex rel. vs. Lindell Ry., 151 Missouri, 162, loc. cit. 182-183.

Grand Ave. Ry. vs. Lindell Ry., 148 Missouri, 637, loc. cit. 645.

See also:

St. Louis vs. West. Union Tel. Co., 149 U. S. loc. cit. 467-470.

St. Louis vs. Boffinger, 19 Missouri 13, loc. cit. 15.

ARGUMENT.

Of the dignity of the ordinance as a law.

In considering the legality of the City ordinance in question, it is well to bear in mind that it is to be approached as would be an enactment of the State law-giving power.

This results from the nature of the ordinance in question, viewed in the light of the policy of the law of the State of Missouri.

It is the policy of the law of this State to delegate to the municipalities affected, its whole power respecting street railway legislation. Particularly is this true with St. Louis. This is evidenced in the Constitution of the State (Const. Art. XII, Sec. 20), the Charter of the City (Charter Art. X; Art. III, Sec. 26, clauses 5 and 11) given it in pursuance of direct constitutional provisions (Const. Art. IX, Secs. 20-25) and the decisions of the State Supreme Court. When the City speaks through its ordinances, therefore, it is speaking for the State, and is entitled to the same consideration.

St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Mo. 239, loc. cit. 352.

State ex rel. vs. Lindell Ry., 151 Mo. 162, loc. cit. 182-183.

Grand Ave. Ry. vs. Lindell Ry., 148 Mo. 637, loc. cit. 645.

St. Louis vs. Boffinger, 19 Mo. 13, loc. cit. 15.

St. Louis vs. Western Union Tel. Co., 149 U. S., loc. cit. 467-470.

Without stopping longer here than to refer to the above

authorities, we pass to the first point, that the ordinance in question is clearly one that the City could pass as a general law, and hence is binding on complainants in the absence of extraneous influences.

POINT I.

Validity of Ordinance 21,087 in general, and power of the City, as to a license-tax in general; form of the ordinance unobjectionable.

Under this state of the law, and in pursuance of its specific authority in its Charter "to license, tax and regulate street cars" (in common with a multitude of other subjects enumerated) in Article III, clause 5, of section 26, the City first enacted a general ordinance imposing a tax of $25.00 on each car per annum, which was in force at all times when any rights were acquired by any street car company in St. Louis, and was regularly paid by every company, until in 1903 this ordinance was amended so as to substitute for the sum of $25.00, a sum equal to one mill for each revenue passenger carried.

Deferring other questions, the proposition at this stage is that a license-tax on street cars as a general proposition is within the City's powers.

To state the proposition is to answer it, and the City's power in general must be conceded.

And this is true although such tax is imposed for revenue.

The power is express, both to license and to tax.

Charter Art. III, sec. 26, clause 5.

The proposition is established not only by the authorities immediately below cited, but in nearly all of the cases hereinafter referred to.

Springfield vs. Smith, 138 Mo. 645, 654, *et seq.*, and authorities cited in the opinion.
Kansas City vs. Corrigan, 18 Mo. App. 206.

See also:

Aurora vs. McGannon, 138 Mo. 38, 45.
St. Joseph vs. Ernst, 95 Mo. 360, 366-367.
St. Louis vs. Weitzel, 130 Mo. 600, 619-620.
St. Louis vs. Green, 7 Mo. App. 468, 474, 478, affirmed on this point in 70 Mo. 562.
St. Louis vs. Sternberg, 69 Mo. 289.
Society for Savings vs. Coite, 6 Wall. (U. S.) 594, 606-607.

In fact, if the complainants attacked the ordinance on the ground that it were void as beyond the authority of the State (or City acting for it) to impose the tax at all, the foundation of this Court's jurisdiction would be gone, and this bill would have to be dismissed.

Savannah, etc., Ry. vs. Savannah, 198 U. S. loc. cit., 396.

The form of the present ordinance.

The particular form of the license-tax in this case is unobjectionable, if the City can pass any license-tax at all.

We deem it convenient to dispose of this point here, although in our synopsis of Ponts and Authorities we have referred to the same under Point VIII.

Ordinance 21,087 enacted in March, 1903 (here assailed) amends the former ordinance so as to substitute for a fixed charge per car, a sum equal to one mill per passenger carried on each car. In other words, it is a graduated tax.

We apprehend there is no difference in principle between the two, so far as the power to enact them goes.

It still remains within the City's express power to license and tax street cars.

The tax is still a license-tax *on each car.* It is not (as the lower Court said) in effect a demand for a portion of the fare collected; it is not a tax on gross receipts. These may vary, and therewith the percentage of the tax to the fare—but the amount of the tax never. The mere fact that one mill is said by Judge Adams to be two per cent of the fare or gross receipts, does not make it a tax on such fare or gross receipts. This is an accidental or incidental comparison only. Whatever the tax be, though of a fixed sum, it necessarily will be in amount *some* proportion of the earnings of the car taxed.

The only difference between the present and amended ordinances is that the old one fixed the sum rigidly at $25.00; the new one at an amount determined by a method uniform and equal in its application to each case—one mill for each paying person carried. The new method is fairer, more equitable and less objectionable than the former. It is graduated by the number of persons carried on the car taxed. But it does not become a tax on the receipts.

The courts of State and nation have often sustained this method of fixing the amount of the tax, and in fact highly commended it.

For instance, in Clark vs. Titusville, 184 U. S. 329, the Court upheld an ordinance of a city which imposed a graduated license-tax upon persons carrying on certain occupations, the amount being different as to persons in the same occupation, but such amount being fixed according to classifications determined by the amount of sales. Amongst other things the Court observes (pp. 333-334):

" . . . 'All license laws and all specific taxes have in them an element of inequality; nevertheless they are universally imposed, and their legality has never been questioned.' Plaintiff in error, however, contends that the tax in the case at bar is a tax on property, not on the privilege to do business, because the final incidence of the tax is on the merchant and is paid by him. But every tax has its final incidence on some individual. That effect therefore cannot be urged to destroy well recognized distinctions. The tax in the case at bar is a tax on the privilege of doing business, regulated by the amount of sales, and is not repugnant to the Constitution of the United States."

In the case of Society for Savings vs. Coite, 6 Wall, 594, this Court sustained a State statute requiring savings societies to pay annually a sum equal to three-fourths of one per cent on the total amount of their deposits on a given day, and held it to be a franchise tax, not a tax on property, and that such a tax was valid. The comments of the Court are in point:

(p. 608): "Different modes of taxation are adopted in different States. . . . Fixed sums are in some instances required to be paid annually . . . in others a prescribed percentage is levied on the stock, assets or property . . . while in others the sum required to be paid is left indefinite, to be ascertained in some mode by the amount of business which the corporation shall transact within a defined period. Experience shows that the latter method is better calculated to effect justice among the corporations required to contribute to the public burdens than any other which has been devised, as its tendency is to graduate the required contribution to the value of the privileges granted and to the extent of their exercise. Existence of the power is beyond doubt, and it rests in the direction of the legislature whether they will levy a fixed

> sum, or if not, to determine in what manner the amount shall be ascertained. . . . Arbitrary sums are almost necessarily unequal."

So in Maine vs. Grand Trunk Ry. Co., 142 U. S. 217, on pp. 228-229, the Court holds that:

> "The State 'may require the payment, each year, of a specific sum, or may apportion the amount exacted according to the value of the business permitted. . . The character of the tax, or its validity, is not determined by the mode adopted. . . . The rule of apportioning the charge to the receipts of the business would seem to be eminently reasonable, and likely to produce the most satisfactory results, both to the State and the corporation taxed. . . . If the amount were specifically imposed as a tax no objection would be pretended. . . . There is no levy by the statute on the receipts themselves, either in form or fact; they constitute, as said above, simply the means of ascertaining the value of the privilege conferred."

In Home Insurance Co. vs. N. Y., 134 U. S. 594, insurance companies were held properly taxed for doing business in the State of New York by an amount graduated according to the percentage of profits on its capital stock, or rather dividends paid. It was held that the tax was not on the capital stock, but upon the corporation franchise or business of the company, and that reference was only made to the capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year; and the Court said (p. 600):

> "The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt for any year in fixing the amount for any year. . . No constitutional objection lies in the way of a legis-

lative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows."

These decisions were reviewed and approved in the recent case of Michigan Central Rd. vs. Powers, 201 U. S. 245.

So also in Missouri graduated license taxes have uniformly been upheld. In Aurora vs. McGannon, 138 Mo. 38, an ordinance was upheld requiring all merchants under penalty of misdemeanor, to take a license, and fixing the amount according to the stock carried, and in addition requiring an *ad valorem* tax on the value of the stock carried, equal to the tax on real estate. The tax was upheld.

In Am. Express Co. vs. St. Joseph, 66 Mo. 675, it is held that a city's power to license, tax and regulate occupations, etc., gives it power to impose an *ad valorem* tax upon the gross annual receipts of an express company from its business done in the city, and such tax violates no constitutional rule of uniformity and equality because different from that on merchants. The Court says (pp. 680-681):

> "In exercising the power thus delegated, the city council might adopt any method of taxation which the legislature might have adopted, and as it has been expressly decided that the legislature might impose a tax upon incomes, it follows that the defendant, through its council, might, as it in fact did, impose a tax on the income of defendant, the gross receipts being in effect the gross income, etc."

Therefore no question can be made because the ordinance here attacked fixes the license tax on each car by the number of persons carried, instead of a rigid sum.

The ultimate questions in this case.

These authorities so far cited are amply sufficient (if indeed any at all were necessary) to show the unquestioned power of the City of St. Louis to enact (1) an occupation or license-tax on street cars using its streets, and that such is not a tax on the franchise or property, nor on the gross receipts, but one for the privilege of the exercise of franchise rights; and (2) that the particular form of Ordinance 21,087 is amply warranted, and is on each car.

This being assumed as established, it is obvious that the complainants cannot escape the provisions of the ordinance assailed by them unless they can show that the same has no application to them. This they seek to do by contending that (1) the special right-of-way or contract ordinances to the various constituent companies, are in themselves an imposition of license taxation so that the City has exhausted its power as to them, or (2) that said ordinances should be construed as exempting the companies from license taxation.

We pass to a consideration of this claim.

POINT II.

An examination of the numerous special franchises or right-of-way ordinances to the complainants and their constituent predecessors, demonstrates that the conditions therein recited as considerations for such grants, are conditions annexed under Article X of the City Charter, and assumed by the companies to get the City's consent to pass the ordinances, which is necessary under the State Constitution, and cannot be construed either as an exercise of the power conferred in Article III, section 26, clause 5, to license and tax

street cars, nor as an exemption from such taxes during the terms of said grants.

If the above proposition is correct, the contentions of the complainants are defeated, the argument and decision of the lower Court are wrong, and there must be a reversal.

That the proposition is correct is, we think, demonstrable.

The construction and operation of a street railway is a matter in which the people of that locality are peculiarly interested; the service to the public is one of the chief considerations; certain of the public streets are to be encumbered by rails and poles, general traffic of vehicles largely affected or diverted thereby and by the running of cars thereover, and large profits for private stockholders usually anticipated by them as the result of paramount rights to be conferred in highways owned and kept up by the public.

These conditions are recognized as differing from those of ordinary vocations.

The Constitution provides that no street railroad can be authorized to construct and operate a street railroad in a Missouri city without the consent of the local authorities, nor can the franchise so obtained be transferred without similar assent.

This consent of the City of St. Louis (here the "local authority" in question) can only be evidenced by ordinance granting the franchise or right-of-way, and may be given either unconditionally, or on such terms and conditions as the City chooses to annex. If no condition is attached, and simply the right to run a street car line is conferred, there certainly is no surrender of the power to impose a license-tax for running cars. If conditions are attached, they are directed to the obtension of the franchise only, and do not

surrender the power of taxation for exercising the privilege so granted.

If accepted by the companies, they do not by performing such conditions acquire any greater rights than they would have had, had the franchise been given without condition.

What conditions may be so imposed by the City in granting the street railway franchise, are specifically designated in Article X of the Charter.

That a license tax for running street cars may be imposed is a power specifically given by clause 5 of Section 26 of Article III of the Charter. That power exists, whether the franchise be conferred on conditions or unconditionally. It has nothing to do with the conferring of the right-of-way, but is a distinct charge for the exercise of such a right.

The conditions specified in Article X which the City may require as "considerations" for the granting of the "franchise or right-of-way," include, for instance, "an annual tax on the gross receipts, or on each car" (Section 1), the rate of fare (Section 2), paving of streets between rails (Section 3), etc.

These are precisely the terms and conditions the special or right-of-way ordinances, pleaded as contracts, do contain. Both ordinances and Charter term them "considerations" for the grant. They are in the nature of a *bonus* for the franchise.

These contract-ordinances say nothing about license-taxes.

Article X says nothing about license-taxes.

Then why should the discharge of these "considerations" be construed to be payment of license-taxes under clause 5 of Section 26 of Article III? Or, if not themselves fixing

license taxes, why should they exempt from payment of such taxes, or be in lieu thereof?

By the stated considerations or bonuses the street car companies bought the City's consent to construct and operate the street car lines. Automobiles, hack and other carrier-companies stand on the same plane without such consent. After the street railway company gets such consent, they all stand alike so far as liability to pay license taxes is concerned.

Obtaining or buying consent to a street railway franchise is by no means paying a tax on each car operated. One is a voluntary bonus, the other a tax.

One is a condition precedent for the right "to be," without which the street railway in the city would be a public nuisance and trespasser on the streets; the other is a charge for the right "to do."

Suppose there were no Constitutional or Charter provisions requiring the consent of the City to operate street railways, any more than is now the case with other kinds of corporations. The street railways could then construct and operate their lines without any franchise ordinances. But would not the power clearly exist, nevertheless, to impose a license tax on vehicles or cars using the streets?

If so, is it not because the power to tax has nothing to do with the conferring of the franchise itself? By what reasoning does the fact, that the City has the power to enfranchise on condition, and does so, exhaust the power to impose a license tax?

Or suppose the State had directly imposed such conditions by general law instead of delegating the power to the city, as in case of foreign corporations. Would not the city still have the power to fix a license-tax as it has in the case of other vocations?

Or suppose that at the time of conferring the franchise there were no power in the city to impose a license tax at all; could not the City exact conditions such as it did in this case, under the consent provision?

Not only so, but if the power to impose a license-tax were for the first time thereafter given, could not such tax subsequently be levied on each car irrespective of the prior granting of the right to operate street cars? It has been expressly so held in Missouri, against the contention, too, that such subsequent license-tax would impair the obligations of contract, in City of Kansas vs. Corrigan, 18 Mo. App. 206, 215.

Or suppose again that the grant was made without any provision in the ordinance for payment of money to the City (as for instance is the case in Ord. 13,872, print. rec. 69-72), is that to be considered an exceptional case where the company may be required to pay the license tax, and not in other cases where percentage or fixed payments are called for as considerations for the grant? Such a construction would certainly be unique.

All of these considerations show that the franchise-consent conditions are a wholly different thing from the license taxing provision, and the exercise of the former does not exclude the latter.

A franchise is the conferring of peculiar privileges not possessed by citizens in general; but after it is obtained there is no reason why the exercise of the privilege by the grantee is not subject to the same obligation to help meet the public burdens by taxation, as is the exercise of the vocation of butcher, hack driver, or any other business not requiring the consent of the City.

The former is contractual, the latter not—at least not if nothing is said in the franchise ordinances.

We request the closest scrutiny by this court of the special franchise or right-of-way ordinances pleaded by complainants as operating to divest or exhaust the power of the City respecting the imposition of a license tax on street cars.

We have presented a careful synopsis of all the provisions or clauses of those ordinances that can have any bearing on this matter, in our "Statement of the Case" (*Ante* pp. 20 to 25), giving there the references to the pages of the printed record where they are set out.

An examination will show that the taxing of the license is not affected. The granting clause of these ordinances is in each case to "operate, construct and maintain" (or equivalent words) a street railway over certain streets.

But the companies agree "in consideration of the rights, privileges and franchises granted" to assume certain burdens.

Chief amongst these burdens is the payment of certain fixed sums each year, or of certain percentages of the gross receipts, usually increasing as the franchise ages.

Complainants, as heretofore stated, contend that these conditions, varying with each car line, call for payment of license-taxes; that hence the City thereby exhausts its power to require any other or general license-tax. The lower Court so held.

Our contention is that these conditions relate to obtaining the franchise only. Hence the City does not thereby fix any license-tax and has not therein exercised its power to impose a tax on street cars. The phraseology of the ordinances cannot be tortured into a surrender or exercise of the City's power of taxation.

If the construction of complainants and of the Circuit

Court were correct, the clause referring to street car taxation would be wholly superfluous and perform no function at all; because the City under the consent clauses of Article X of the Charter, would and could do exactly as it did; no more—no less. It was partially done, for instance, in Kansas City in the Corrigan case (18 Mo. App. 206), above referred to, where the franchise was granted before that City had authority to levy a license-tax on cars.

Every franchise imposes some such condition or obligation to the City—always annexed under the consent clauses, not the taxing clause. Hence every consent to a franchise, if complainants were right, would be the exercise at the same time of a tax on the license. To grant the City an additional power to impose a tax would be a waste of words.

Examining the Special Ordinances in the light of all the provisions of the Charter, it seems reasonably clear that the conditions calling for payments of annual sums to the City, or of percentage on the gross receipts, were imposed without the slightest reference to exclusion of the exercise of the power to "license, tax and regulate . . . street cars," given in Art. III (clause fifth, of sec. 26) of the Charter. And it is equally obvious that they *were* imposed as initial conditions to the securing of a franchise or right-of-way from the City, under the provisions of Art. X, sec. 1, of the Charter, which gives the City power amongst other things "to sell the *franchise or right-of-way* for such street railroads to the highest bidder, *or as a consideration therefor* to impose a per capita tax on passengers transported—[to avoid possible confusion note that Ord. 21,087 is not passed under this clause, but the taxing clause]—*or an annual tax on the gross receipts of such railroad,* or on each car," etc.

An additional suggestion is that Art. X prescribes conditions for, and deals with, the *franchise* as a whole.

Article III however only with each *car*. There is no specific power anywhere in the Charter to lay a license-tax on the company as such.

There is no good ground why a street car should not be in the same position with any other vehicle using the streets, so far as power to exact a license-tax is concerned.

But there is good reason why the street railway franchise should not be granted except on certain conditions satisfactory to the locality affected. It is only after such franchise is granted by an ordinance that the street car company has the right to exercise its privileges to do business, as other concerns have without such grant from the City.

The Constitutional provision requiring the City's consent is for the very purpose of enabling the City to make such terms and conditions as it sees fit before conferring the privilege on a street car company to use the streets, which other corporations or persons may do as a matter of right.

But the taxing thought has no place in, and is foreign to, this provision of the Constitution. That is a different thing.

The *right* of the City to annex the conditions set out in the contract-ordinances is clear, under the State Constitution and City Charter, without its trenching on its taxing power.

Speaking of the legal provisions requiring such consent of cities to the franchise of a street railway, the court in banc in St. L. & Mer. R. Ry. Co. vs. Kirkwood, 159 Mo. 239, on pp. 252-253, said:

> "When such power is given to cities and towns it is not limited to a mere 'yes' or 'no,' but they may impose such conditions upon their consent as they see fit. (Citing cases.)
>
> "Judge Elliott in his work on railroads (vol. 3, sec. 1081) says: 'When a municipal corporation has the

power to grant or refuse a railroad company the right to use its streets as it sees fit, or when its consent is required before any company can so use them, it has, we think, the authority to prescribe the terms and conditions upon which the company shall have the right to construct and operate a railroad in its streets.'

"Judge Dillon in his work on Municipal Corporations (volume 2, section 706) says: 'Where under the general statute of the State, a railroad company is forbidden to construct its road upon the streets of an incorporated city, 'without the assent of the corporate authorities,' these are not limited to a simple granting or denial of the right-of-way, but may prescribe conditions on which they will give their assent, and if these are accepted by the railroad companies, they are binding on the parties,'" etc.

So, in speaking of a similar Constitutional provision the Court in Allegheny City vs. Ry., 159 Pa. St. loc. cit. 416, says:

"It [the City] simply says: 'I have the sole and exclusive power to consent or refuse; on certain conditions I consent, otherwise I refuse; I don't compel you to do anything, I merely give you a choice between alternatives; you have no power or right to demand my consent, you ask it, and I give it on my own terms or not at all.'"

While of course in one sense the original franchise is derived from the State, yet the Constitutional provision requiring the consent of the City practically operates to put in the City the power to confer what is in effect a franchise. We term it that for convenience and it is immaterial whether the term be strictly accurate or not. The Missouri Constitution calls it a "franchise" (in providing that "nor can the franchise so granted be transferred without similar assent," etc.); so does the Charter of the City (call-

ing it a "franchise or right-of-way" in Art. X., sec. 1; also sec. 3). In State ex rel. vs. Hilbert, 72 Wisconsin loc. cit. 190, the Court says of such an ordinance:

> "It hardly admits of question that the powers granted by the City under the ordinance . . . to build and maintain in the streets of said City, railroad tracks, and operate and run cars thereon for the carriage of passengers, was a *franchise* granted to the corporation . . . The fact that the franchise is granted by the State through the action of the City . . . cannot change the nature of the thing granted."

And see also analogous discussion in Blair vs. Chicago, 201 U. S. loc. cit. 457-460.

There is therefore no room for discussion that the City had the right in the ordinances to the complainants and their constituent assignors to condition the granting of these ordinances on the payment of the sums therein named, and this without exercising or in any way affecting the general municipal power to impose a tax for running cars.

There remains therefore only the question whether a *construction* of these special ordinances shows an exercise of such power to tax, or shows a surrender thereof.

They confer no hint that they are an exercise of the power to tax street cars, only of the power to confer franchises on conditions therein named.

That the railways themselves so regarded the ordinances is shown by the fact that at all times when any one of these franchises was conferred, there existed the prior ordinance calling for a yearly street car tax of $25.00 per car, which all the companies paid from the beginning until the amendment of 1903—but of this point later.

We think it clear that the special burdens imposed as

conditions for the franchises do not concern the taxing power at all.

There is a difference between the two powers; one to grant franchises on condition, and the other to tax the exercise of the rights under the franchise.

One is power to contract, the other to tax.

While contract burdens assumed in such franchise ordinances are sometimes erroneously or inaccurately called "a tax," in the general sense of being a burden, yet they are *not* such in the strict legal sense of a charge by the State for the purposes of revenue, when speaking of either general taxes or license taxes.

See Metropolitan Street Ry. vs. New York, 199 U. S. loc. cit. 44-45.

Also Brooklyn Ry. vs. New York, 199 U. S. loc. cit. 50 (where the Court quotes from 97 N. Y. 282, speaking of sums to be paid by a street car company: "The contract of the defendant arises from the provisions of its Charter by which it agrees to pay a certain sum reserved therein in consideration of the privileges conferred thereby. It is *neither a tax,* nor is it a penalty," etc.).

The distinction was directly made recently in Newport, etc., Ry. Co. vs. Newport, 100 Va. 157, where the Court, in disposing of the point, says on p. 162:

> "It is further contended that the right to assess a license tax upon the plaintiff in error, in order to be exercised, should have been reserved to the City in the ordinance granting the company the right to construct its tracks and operate its cars on the streets. This position is not sound. The right to levy taxes does not arise out of contract. Exemption from taxation

is never presumed. The legislature cannot be held to have intended to surrender the taxing power unless its intention to do so has been declared in clear and unmistakable terms."

(The passage above quoted is also appropriate as illustrating the real position of the complainants in this cause. They claim that an exercise of the power to impose a license tax is involved in or to be inferred from the franchise ordinances imposing conditions which are silent as to such tax, *i. e.*, because the City did not therein reserve such power; thereby getting the cart before the horse, since the law is that the complainants must exempt themselves from its operation.)

On the other hand that a license fee imposed for revenue *is a tax* in the strict sense of the word, is clear, and has been distinctly so held in Missouri.

St. Louis vs. Spiegel, 75 Mo. 145.
St. Louis vs. Spiegel, 90 Mo. loc. cit. 591.
Kansas City vs. Corrigan, 18 Mo. App. 206, 215.
See also Ward vs. Maryland, 12 Wall, 418.

It has been uniformly held that such contractual obligations as are in question in this case, assumed by street railway companies in obtaining municipal right-of-way ordinances or franchises "to operate, construct and maintain" street railways, under provisions practically like those here in issue, are never construed as exempting or relieving the street car companies from the imposition of license taxes by duly enacted ordinance of such municipality, even if not imposed until after the acceptance of the companies' franchise ordinances.

There is not a word in any of the ordinances relied upon

by appellees that hints at a surrender by the City of its power to tax street cars, or to exempt them from such tax, or grant an immunity therefrom.

In construing the ordinance of a city conferring upon a street railway company the authority to construct and operate a street railway, the right of the city to exact license fees will not be denied unless such right has been expressly surrendered in the ordinance. Such grants are construed strictly against the corporation companies, and liberally in favor of the public. Silence is negation, and doubt is fatal to the claim. There is no such surrender by a grant to operate, construct and maintain a street railway, though given upon compliance with certain conditions and payments. And when the contract ordinance between the City and the company does not in terms dispense with the payment of a license tax, the rights of a company are not impaired by a subsequent ordinance requiring such payment.

This being one of the vital points in this case, we ask the Court's indulgence in referring to the decisions thereon at some length.

We desire first to call attention to the case of Springfield vs. Smith, 138 Mo. 645, decided by the Supreme Court of Missouri *in banc,* which is quite in point, discusses the law fully in the light of the Federal and State Court decisions, and lays down the doctrine as above stated.

In this case it appears that the city of Springfield, like St. Louis, had power to levy and collect a license tax on "street railroad cars;" the city enacted an ordinance requiring a license fee of ten dollars for each street railroad car, making it a misdemeanor to operate one otherwise; that the defense was made that the ordinance was inapplicable

to the Metropolitan Street Railway Co. because it would impair contracts, on the ground that the company was exempted "by reason of the acceptance by it and its assignors of two prior ordinances, the conditions of which had been duly performed by them." These ordinances are of the same nature as in the case at bar, except that no percentage on receipts is charged. They provide, amongst other things, for repair, etc., of the streets between the rails, limitation of fare to five cents, completion within certain time, etc. That other conditions, requiring certain payments to be made, are here invoked, does not alter the principle involved. The contentions of the company were denied, the $10 per car ordinance upheld whether regarded as a police or as a revenue measure, and the ordinances conferring the franchise construed as not intending any exemption, and that if intended it would be void. The court fully considers the question, and quotes from numerous decisions from the U. S. Sup. Ct. and the conclusion reached is that (138 Mo. 657):

> "Applying to it [the alleged exemption ordinance] these principles of construction, no argument is required to demonstrate that it does not, by the terms used, nor by any fair implication therefrom, exempt the street railway company from the license tax which the city was expressly authorized to impose, and subject to which the company took the franchise therein granted" (p. 657).

The Court quotes from a number of decisions of the U. S. Supreme Court (which passages we will not here repeat because these cases, with others, are hereinafter referred to), and also relies on a number of decisions from other States, concerning which it says (138 Mo., p. 656):

"Illustrating the application of these principles, in

Wyandotte vs. Corrigan, 35 Kan., 21, a case quite analogous to the one in hand, it was held that where an ordinance granting a street railway franchise for twenty-one years providing how and when the road shall be constructed, how it shall connect, that the tracks and the street between the tracks shall be kept in repair and up to grade, and regulating the price to be charged for fare of passengers, such ordinance will not exempt the corporation from reasonable regulation by the city in the operation of the road; nor will it prevent the city from levying and collecting a license tax thereon, by ordinance subsequently passed; which in this case was $100 per annum. In the *City of New Orleans vs. Railroad,* 40 La. Ann., 587, it was held that 'a contract conferring the right to lay and operate a street railway, without dispensing with the payment of a license, is not impaired by the exaction of such license;' and in that case a license tax of $2,500 per annum was sustained; and going further in the same direction it was held by the same court, in *City of New Orleans vs. Railroad,* 42 La. Ann., 4, that 'a contract between a municipal corporation and a railroad company by which the latter pays a *bonus* for the franchise therein conferred by the city, can not be construed as conferring an immunity from the payment of license on its business by the company, in the absence of an express stipulation to that effect in the contract.' "

The case of Metropolitan Street Railway Co. vs. New York Tax Com'rs., 199 U. S. 1, is very instructive to show the aversion of the courts to such a claim of exemption from taxes as complainants here make. In that case the legislature had added to the prior law, provisions for taxing the franchises of railroads, and it was contended by the street railroads that this operated as the impairment of their contracts under ordinances of New York city conferring the right to construct, operate and maintain street railroads

upon payment of certain percentages upon the gross profits, etc.; the act also provided that amounts paid for license taxes might be credited to such companies. The law of New York also requires the consent of the local municipal authorities to street railway franchises, substantially as here, and further provides that the companies pay certain percentages into the city treasury, "as a condition of the said consent to use the streets," etc., and requiring them to commence and complete work according to the plans, etc., and in case of failure, to operate as a forfeiture, with the right to the city "to sell to the highest bidder," etc. The Court denied the contention that there was any exemption or impairment of any contract, or denial of the equal protection of the laws, or deprivation of property without due process of law. While in that case the exemption from taxation of the franchise itself was claimed, by reason of the ordinances to pay certain percentages, and in our case exemption is claimed from a license-tax, yet the reasoning of the Court is precisely applicable to this case, as are the numerous authorities quoted by the Court. Amongst other things the Court in speaking of "the main contention that this tax legislation impairs the obligation of contracts," uses this language, which we think is pointedly applicable here:

> "Applying these well established rules to the several contracts, it will be perceived that there was no express relinquishment of the right of taxation. The plaintiff in error must rely upon some implication, and not upon any direct stipulation. In each contract there was a grant of privileges, but the grant was specifically of privileges in respect to the construction, operation and maintenance of a street railroad. These are all that, in terms, were granted. As consideration for this grant the grantees were to pay something, and such

payment is nowhere said to be in lieu of, or as an equivalent or substitute for taxes. All that can be extracted from the language used was a grant of privileges and a payment therefor. Other words must be written into the contract before there can be found any relinquishment of the power of taxation." (p. 37.)

Again in the same case (on p. 40):

"It is urged that when the public grants a privilege on condition of the payment of an annual sum, the contract implies that the public shall exact no larger amount for that privilege; that to impose a tax is simply increasing the price which the grantee is called upon to pay for the privilege."

—an argument, it will be observed, that is precisely the one urged by the complainants in this case, and by the lower Court in its opinion, but which was flatly refuted, and rejected by this Court; and the Court made quotations from its prior decisions, amongst them that of New Orleans City Ry. vs. New Orleans, 143 U. S. 192, from which the Court quoted as follows:

"Mr. Justice Gray, speaking for the court, said: 'Exemption from taxation is never to be presumed. . . . Assuming, without deciding that the city of New Orleans was authorized to exempt the New Orleans City Railroad Company from taxation under general laws of the State, the contract between them affords no evidence of an intention so to do. . . . The case at bar cannot be distinguished from Memphis Gaslight Co. vs. Taxing Dist., in which this Court upheld a license tax upon a corporation which had acquired by its charter the privilege of erecting gas works and making and selling gas for fifty years; and speaking by Mr. Justice Miller, said: 'The argument of counsel is that if no express contract against taxa-

tion can be found here it must be implied, because to permit the State to tax this company by a license tax for the privilege granted by its charter is to destroy that privilege. But the answer is that the company took their charter subject to the same right of taxation in the State that applies to all other privileges and to all other property. If they wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business they should have required a provision to that effect in their charter. The Constitution of the United States does not profess in all cases to protect property from unjust and oppressive taxation.' "

A leading case, very much in point here, is that in which the Supreme Court of the United States affirmed the Louisiana Courts, viz.: New Orleans Ry., etc., vs. New Orleans, 143 U. S. 192. In that case it appeared that an ordinance of New Orleans provided for an annual license-tax for the business of operating horse cars for transportation of passengers, and provided that such annual license should be partially based on the annual gross receipts, the license fee in that particular case being $2,500 per annum. The defense was the unconstitutionality of the ordinance so far as affecting the defendant as impairing the obligation of contracts based on prior ordinances in which the City had granted for twenty-five years the right-of-way and franchise to the assignor of defendant, for the sum of $650,000, paid in advance; and in addition the companies had agreed amongst other things to keep the streets in repair, charge certain fares, and also to pay annually into the city treasury a tax equal to the real estate tax, the city also agreeing not to grant any other right-of-way over the same streets. Notwithstanding these considerations and the payment in advance of the large sum of $650,000 for the privileges, the

Supreme Court unanimously denied the claim of exemption from the graduated license-tax and upheld the ordinance against defendant. The Court says in its opinion (143 U. S. 195):

> "Exemption from taxation is never to be presumed. The legislature itself cannot be held to have intended to surrender the taxing power, unless its intention to do so has been declared in clear and unmistakable words. Vicksburg, etc., Ry. vs. Dennis, 116 U. S., 665, 668, and cases cited. Assuming without deciding that the city of New Orleans was authorized to exempt the New Orleans City Railway from taxation under general laws of the State, the contract between them affords no evidence of an intention to do so. The franchise to build and run a street railway was as much subject to taxation as any other property. . . . The case at bar cannot be distinguished from that of Memphis, etc., vs. Shelby County, in which this Court upheld a license tax upon a corporation which had acquired by its charter the privilege of erecting gas works and selling gas for fifty years; and speaking by Mr. Justice Miller, said: "The argument of counsel is that if no express contract against taxation can be found here, it must be implied, because to permit the State to tax this company by a license-tax for the privilege granted by its charter is to destroy that privilege. But the answer is that the company took their charter subject to the same right of taxation in the State that applies to all other privileges and all other property. If they wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business, they should have required a provision to that effect in their charter,' etc., 109 U. S., 398, 400."

This New Orleans case is, we think, in point, and is, it seems to us, conclusive. The mere fact that in the one case the payment was of a lump sum in advance, to get the City's

consent, and in this case the payments are distributed through the life of the franchise, can make no difference in principle. "Nor would the result be altered by the fact that the payment for the thing granted was to be made annually instead of by a single sum in gross" is a statement in another connection that ought to and does precisely apply to this situation (199 U. S. 39). The New Orleans case above cited (143 U. S.) has been constantly approved by this Court (as late as 198 U. S. l. c. 398, 199 U. S. 40 *supra*, and 205 U. S. 248), and it affirmed the Louisiana cases reported in 40 La. An. 587, and 42 La. An. 4, which were quoted and followed by the Missouri Supreme Court in the Springfield case, *supra* (on p. 656).

The case of Memphis Gas Co. vs. Shelby Co., 109 U. S. 398 (quoted as above in the New Orleans City Railroad case, and also in the recent case in 199 U. S. 1, heretofore cited) is also very instructive, and we think in point. It held a privilege to vend gas for 50 years did not exempt from license-taxes; and the Court, in addition to the quotations heretofore appearing as incorporated in the later opinions of the same Court, itself quotes from a prior case, as follows:

> "In the case of Erie R. R. vs. Pennsylvania, 21 Wall., 492, it was said: 'This Court has in the most emphatic terms and on every occasion, declared that the language in which the surrender (of the right of taxation) is made must be clear and unmistakable. The covenant or enactment must distinctly express that there shall be no other or further taxation. A State cannot strip herself of this most essential power by doubtful words,' etc."

In Railway Co. vs. Philadelphia, 101 U. S. 528, the street car company received its charter under certain conditions,

amongst them to pay annually into the city treasury "a six per cent tax on the excess of dividends over six per cent on the par value of the stock, and the further provision to pay such license on each car as was *then* paid" by other companies. That license then was $30 per car. Afterwards, by ordinance, and then by statute, it was raised to $50 per car per annum. The company refused to pay over $30. It was held that the increase did not operate as the impairment of a contract, as there was no express stipulation that there should not be such increase in the license-tax. Amongst other things the Court said:

> "Exemptions of the kind are to be strictly construed, the rule being that the right of taxation exists unless the exemption is expressed in clear and unambiguous terms:" (p. 532) . . . "The language employed is not sufficient to take the case out of the rule that the alleged exemption will not be sustained unless it be expressed in clear and unambiguous terms." (p. 536.) . . . "The grant is to be strictly construed against the corporation and in favor of the public, and nothing passes to the corporation but what is granted in clear and explicit terms." (p. 540.) . . . "Whatever is not unequivocally granted is taken to have been withheld." (p. 540.)

The Missouri Supreme Court in the Springfield case, *supra* (138 Mo., p. 655), quotes with approval as applicable to this kind of a case, the remarks of Swayne, J., in Fertilizing Co. vs. Hyde Park, 97 U. S. 659, 666, in commenting on the contention of exemption by contract, from operation of general ordinances:

> "The rule of construction in this class of cases is that it shall be most strongly against the [private] corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but

what is given in unmistakable terms, or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is fatal to the claim. This doctrine is vital to the public welfare." (p. 666.)

These principles were aiso applied in St. Louis vs. Bank, 49 Mo. 574, holding that a charter by which a bank was to pay one per cent of its net profits by way of taxation did not operate as a contract not to tax at an increased rate, although such charter must be viewed as a contract. And that a subsequent license-tax of $200 on all persons transacting that business, imposed by the City of St. Louis, was binding on such bank.

In Blair vs. Chicago, 201 U. S. loc. cit. 471-473, the Court refers to numerous decisions sustaining the doctrine of strict construction against railway grants, and amongst other like suggestions observes:

"Legislative grants of this character should be in such unequivocal form of expression that the legislative mind may be distinctly impressed with their character and import, in order that the privileges may be intelligently granted or purposely withheld. It is matter of common knowledge that grants of this character are usually prepared by those interested in them, and submitted to the legislatures with a view to obtain from such bodies the most liberal grant of privileges which they are willing to give. This is one among many reasons why they are to be strictly construed. . . . Since the decision of the Dartmouth College case, 4 Wheat. 518, this court has had frequent occasion to apply and enforce the doctrine that a grant of rights in public property accepted by the beneficiary will amount to a contract entitled to the protection against impairment by action of the State or municipalities acting under State authority. Concurrent with this principle and to be considered when construing an alleged grant

> of this character, is the equally well established rule, which requires such grants to be made in plain terms in order to convey private rights in respect to public property, and to prevent future control of such privileges in the public interest."

The law as stated in the above quotation was re-announced in Cleveland Electric Ry. vs. Cleveland, 204 U. S. 116, loc. cit. 129-130.

If we may be pardoned for lengthening this argument by a reference to decisions in the States generally, we will refer to one or two such.

In Newport News Ry. Co. vs. Newport News, 100 Va., loc. cit. 162-163, the court says:

> "It has been repeatedly held that a municipal ordinance granting to a street railway company a franchise to construct its tracks and operate cars upon the streets of the city, and which is silent upon the question of taxation, cannot be construed as conferring immunity from the payment of a license tax, in the absence of an express stipulation to that effect [citing cases]. Nowhere in the ordinance under which the plaintiff in error was authorized to construct its tracks and operate its cars is there, either in terms or by implication, an exemption from the tax imposed [a license tax on each car] by the city. The company took its charter subject to the same right of taxation in the city that applies to all other privileges, and to all other property. If it wished or intended to have an exemption of any kind from taxation it should have obtained a provision to that effect in its charter. Memphis Gas Light Co. vs. Shelby County, 109 U. S. *supra*. Upon the whole case, we are of opinion that the ordinance complained of is not in conflict with the Constitution and laws of either this State, or the United States, but is a legitimate exercise of municipal power."

The case of State ex. rel. Cream City Ry. vs. Hilbert, 72 Wisconsin 184, is also instructive. In that case the street railway company obtained its franchise in 1875 and the rate of fare was fixed, etc., and a clause inserted that an annual license fee for each car of $10 should be paid before operating; the City thereafter in 1888 passed a general ordinance requiring a license of $15 per car to be paid; the company objected on the ground of impairment of contract; the new tax was sustained both on the ground of a reserve power to alter, and upon the principles of construction above stated that there was no irrevocable contract for the $10 tax, but only a contract to pay a license fee of $10 until the common council should see fit to increase it.

Any number of further authorities could be cited as showing the deep-seated conviction of the courts—State and Federal, and particularly of this court—that the sovereign power (or its delegated agents exercising that power) cannot be held to surrender its essential attributes in the absence of an unquestionable intention manifested in apt words.

But the above authorities (if in fact any at all were needed) are enough to show the fallacy of complainants' claims.

In concluding this phase of our argument we desire to distinguish the case mainly relied upon by complainants and the lower court in its holding, namely, Detroit vs. Detroit Citizens' Ry. Co., 184 U. S. 368. When examined, we think this case is seen not to be in point at all. In that case the city imposed as one of the conditions to its consent to a franchise that the fare should be five cents per passenger. That stipulation is held by the court to be express, and in pursuance of plain authority so to contract. After

the roads had been running some time and doing business on the basis of that vital and most essential power, the city undertook to cut down the fare to a figure it dictated, which would have ruined the companies. It was held that this would impair the contract, and rightly so. There was there this express provision upon a most vital point, assented to by both sides—"a subject for grave consideration and conference between the parties" (p. 384), which of course was *expressly incorporated into the ordinance-contract.* But that is a vastly different thing from enacting a license-tax in this case, where there is no expression of any kind incorporated into the ordinances against such tax, and which is enacted under the taxing power, not the contractual power. If in our case the city had attempted by ordinance to increase the special amounts of fixed sums or on gross receipts that the various companies had contracted to pay in the ordinances conferring their franchises, then the above cited case might be in point, because on that point there *was* a contract; but the city never attempted to do any such thing. It simply amended its own license-tax on street cars (as it could, without consulting anybody, have done with respect to carriages, omnibuses or any other subject), and concerning which there never was any contract or agreement. The former is contractual—the latter legislative. This difference is illustrated in a passage from the said Detroit case wherein the Court observes:

> "It is plain that the legislature regarded the fixing of the rate of fare over these street railways as a subject for agreement between the parties, and not as an exercise of a governmental function of a legislative character by the city authorities under a delegated power from the legislature" (pp. 385-386).

That case therefore does not militate against our posi-

tion at all nor weaken in the least the application of the other authorities hereinbefore cited.

We submit that under the foregoing authorities and principles of law, the franchise ordinances cannot possibly be construed by this court to be contracts not to exact any license tax, nor as in themselves contracting for certain license taxes in the percentage amounts or fixed sums per annum paid for the city's consent.

(*b*)

Interpretation of the parties themselves as confirmatory of appellant's contentions.

But if there still remained any doubt that by the proper construction of the ordinances in question the City has not surrendered its power to impose a license-tax on the railways and could still do so by extraneous general ordinance as it has done, the last vestige of such doubt must disappear in the light of the practical construction placed on these ordinances by the street car companies themselves.

Under the agreed Statement of Facts, section (21), (printed record, p. 144), it appears that there was in force a general ordinance up to 1903, which provided for a license-tax of $25.00 per annum on each street car, and in other respects was quite similar to the present ordinance which amends it.

This $25.00 per car license-tax was in effect when the special franchise ordinances were enacted and accepted, by the complainants and their predecessors, and as recited in the agreed statement (p. 144, printed record), "all of said companies, including the complainants United Railways Company and St. Louis Transit Company, have at all times

paid the sum of $25.00 per car required to be paid under said ordinance, and continued so to do until the going into effect of ordinance 21,087."

That is to say, "*all* of the companies" and "at *all* times" recognized without question the right of the city to impose and collect a license-tax, *independently and outside of the payments called for in the franchise or consent ordinances,* and continued without objection to pay the same until that license-tax ordinance was amended in March, 1903, thus covering a period, according to the dates of approval of the consent ordinances (the earliest of which in the record is No. 4371, approved March 10th, 1859), of nearly half a century.

Can there be a more convincing admission that the companies themselves knew that there was no surrender by the City of its power to tax their cars? Can there be imagined a course of action more flatly contradictory of their present contention?

This $25.00 tax is not expressly referred to or incorporated into any one of the numerous ordinances pleaded by complainants as contracts, any more than the present one mill ordinance, and the companies admit that this license-tax was proper, and the right of the City to impose it had neither been contracted away in the franchise ordinances, nor had it been exercised in the provisions thereof so as to exhaust the right of the City during the life of the respective grants.

Yet when after the efflux of many years the City passes an amendment as to the amount and method of collection of such license-tax, the discovery is suddenly made that it had long ago contracted it away in the franchise ordinances

to the several street car companies, or had exhausted its powers because the conditions therein named operated in themselves as an exercise of such power, and that any general license-tax is void.

Is there a single argument or contention for the invalidity or inapplicability to complainants, of Ordinance 21,087, that is or could be urged by complainants or by the Court below, which could not equally have been urged against the $25.00 tax which has been recognized and paid by complainants and *all* the constituent companies (the record shows over a score) *all* the time since the organization of the earliest one?

If there is, we fail to see it.

Suppose the amendment had changed the tax from $25.00 to $10.00, or to $75.00, or any fixed sum; would that affect the question of the *construction* to be put on the independent prior ordinances as contracts?

There never was any agreement (except in some cases by reference) to pay $25.00 a car; neither was there any not to pay it. So there never was any agreement (except by such same reference) to pay one mill per passenger on each car; neither was there any not to pay that.

If the $25.00 tax is not excluded by the franchise or consent ordinances, then the mill tax is not excluded.

So far as construction of the ordinances as contracts of immunity from license taxes is concerned, there is no difference whatever. The principle is identical, so far as the *power* of the City is affected.

Yet the complainants having acknowledged their obligation and paid the former, come now and claim there is a contract not to pay the latter.

If there is in their contract ordinances that which gives

immunity from the latter tax, why not also from the former?

The principle of construction as to both is identical.

Complainants and their predecessor constituent lines did not each year pay this tax, without objection or protest, merely as a charitable or benevolent contribution to the treasury of the City of St. Louis.

They paid because they owed it, because they believed the City could collect it. The best possible proof of their own construction of the meaning of their franchise-ordinances lies in this long continued recognition.

The obvious cogency of the common-sense argument that the meaning of a contract is apt to be in accord with the interpretation both parties thereto (if *sui juris* and dealing at arms' length), place upon it, has been fully crystallized into a well-established rule of law.

Its force is fully recognized by the Missouri Courts in construing contracts wherein the City of St. Louis is a party.

It was applied for instance in St. Louis Gaslight Co. vs. St. Louis, 46 Mo. 121. In the course of a full discussion the Court observes, p. 128:

> "Nor should any regard be paid to loose declarations or equivocal or isolated acts, but the continuous conduct of the parties for a series of years concerning the subject matter of the contract, and in fulfillment of its conditions—every act pointing to the same direction—may make their understanding as clear as the greatest precision of language."

The same ruling was made in St. Louis vs. Laclede Gaslight Co., 155 Mo. 1, loc. cit. 19, and numerous cases cited, the Court saying *inter alia*:

"The views expressed find support in the contemporaneous interpretation of the parties, which, when the language of a contract is ambiguous, is entitled to great, if not controlling, influence," etc.

The decisions of this Court are to like effect.

For instance in Insurance Co. vs. Dutcher, 95 U. S. loc. cit. 273, the Court says:

"The practical interpretation of an agreement by a party to it is always a consideration of great weight. The construction of a contract is as much a part of it as anything else. There is no surer way to find out what the parties meant, than to see what they have done. Self-interest stimulates the mind to activity and sharpens its perspicacity. Parties in such cases often claim more, but rarely less, than they are entitled to. The probabilities are largely in the direction of the former. In considering the question before us, it is difficult to resist the cogency of this uniform practice during the period mentioned, as a factor in the case."

So in Topliff vs. Topliff, 122 U. S. loc. cit. 131, quoting from Chicago vs. Sheldon, 9 Wall., 54, it is said:

"In cases where the language used by the parties to the contract is indefinite or ambiguous, and hence of doubtful construction, the practical interpretation of the parties themselves is entitled to great, if not controlling influence. . . . If the minds of both parties concur, there can be no great danger in the adoption of it by the court as the true one."

If, therefore, we adopt in the construction of these ordinances the rules of law independently of what the parties have done, the contentions of complainants cannot stand; if we adopt the construction of complainants themselves as

evidenced by their own prior acts, their present contentions are *a fortiori* untenable, and manifestly mere afterthoughts

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We believe this cause could be safely rested on the foregoing authorities and arguments which cover the main features of this case.

There are, however, other considerations confirmatory of our contentions which we append.

Intimations in the Ordinances Inconsistent With Complainants' Construction.

We may here suggest also as corroborating the plain construction contended for by the City, that while on the one hand there is not an intimation upon which appellee can put its fingers, in any one of the numerous franchise ordinances, which expressly or impliedly *surrenders* the right of the City to tax street cars, yet there are distinct assertions which slipped into some of these ordinances which show the thought that the right to impose license-taxes was not considered as involved in them, and require the percentage payments on gross receipts (claimed by appellees to be of themselves, or to exempt them from license-taxes) to be paid, and also "such company shall hereafter pay such license as may be prescribed by ordinance," or to be paid in addition to license fees now or hereafter prescribed by law. Such provisions are directly contradictory of the contention here urged by the railways, and while not contained in many ordinances yet their existence at all, in any, is significant of the light in which such percentage payments are regarded, to-wit, as in no way being of themselves license taxes, otherwise they would not be expressed as paid independently of license fees, or in addition thereto.

Ord. No. 8,701, sec. 5 (print. rec. p. 65; *ante* statement. p. 25).

Ord. No. 8,371, sec. 6 (print. rec. p. 110; *ante* statement. p. 25).

Ord. No. 16,639, sec. 5 (print. rec. pp. 77-78; *ante* statement p. 23).

Express provisions in the contract ordinances equivalent to a covenant that complainants will pay such license taxes imposed as by general ordinance 21,087.

There are also express provisions of much significance appearing in the franchise ordinances, the direct effect of which is equivalent to an *agreement* that the complainants (or their predecessors in title) will pay the tax which they now assail.

Most of the lines finally consolidated with the complainant United Railways Company (as well as complainant St. Louis Transit Co.), in their original franchise ordinances, agreed as one of the conditions thereof to *"comply with all the general ordinances now [then] in force or which may hereafter [thereafter] be passed in reference to street railways."* (See *ante*, Statement, pp. 24-25, where a synopsis of these ordinances and the page of printed record is given where they appear in full.)

Amongst the constituent lines acquired by United Railways Co., containing such a condition in the franchise, may be mentioned the Southwestern Ry., Southern Ry., Southern Electric Ry., Cass Avenue and F. G. Ry., Jefferson Avenue Rd., and complainant St. Louis Transit Co.

These companies (perhaps others) have agreed, it will be observed, to comply with all *general* ordinances then in force or thereafter to be enacted, in reference to street railways.

There was a general ordinance then in force; there was a general ordinance thereafter enacted, or rather an amendment of the former. The former was the $25 per car license tax, the latter the mill per passenger on each car tax.

By virtue of the conditions above referred to, these companies *agreed* to pay the tax they now seek to repudiate.

Said provisions of themselves are a contractual acceptance and incorporation into the consent-ordinances of the then license tax on cars, and is a recognition of the right to impose the same; they are also an executory acceptance and incorporation into the consent-ordinances of the amending tax ordinance here assailed.

Not only so but this is true, even if, in the absence of such reference incorporating them as a part of the agreement, these license tax ordinances would be inapplicable or non-enforceable because operating as an impairment of the contract or consent ordinance.

We think this is clearly within the recent decision of this court in Interstate Consolidated Street Railway Co. vs. Massachusetts, 207 U. S. 79. In that case a general statute enacted prior to the incorporation of the street railways required the sale of tickets for the transportation of children going to and from school for half the regular fare. The unconstitutionality of the statute was invoked, as denying the company the equal protection of the laws and depriving it of its property without just compensation and without due process of law. By the act of incorporation of the company it was "subject to all the duties, liabilities and restrictions set forth in all the general laws now or hereafter in force relating to street railways," etc. It was held that it was immaterial whether the statute was constitutional or not, because the street railway company had by its

incorporating under that law *agreed* to accept the terms of the statute as a part of their obligations. Hence it was bound by contract as if the said statute were incorporated into the franchise agreement, "whether such requirements could be made constitutionally of an existing corporation or not. The railroad company would have come into being, and have consented to come into being subject to the liability, and could not be heard to complain. . . . The contents of a document may be incorporated or adopted as well by generic as by specific reference, if only the purport of the adopting statute is clear."

The above case goes of course further than is necessary to sustain our contention in this case, inasmuch as there is here no question that the city had ample general power to enact the license tax in question, the only dispute here being whether it is excluded from application to the complainants.

Upon this point the case above cited ought to be conclusive against complainant Transit Company and such of the assignor companies of United Railways as contain the provisions above referred to and set forth.

POINT III.

If the City had attempted to barter away its power to impose the license-tax in question, in the contract ordinances conferring its consent, as claimed by appellees, such action would have been void as contrary to law, for either of several reasons.

As shown above in Point II, we think that a construction of the right-of-way ordinances upon proper legal principles, will exclude the possibility of appellees being correct that they were intended to be relieved from payment of license-

taxes on cars, and we think it will not be necessary to go further. We insist the provisions they rely on are conditions for consent, not for payment of license-taxes. But for the sake of the argument only, we contend that if the railways were right in that contention, it would not avail them, for such attempted exemption would be void, whether (1) the City attempted expressly to exempt the railway companies, or (2) impliedly imposed a license-tax by providing for the percentage payments to be taken in lieu of such tax, which really amounts to the same thing.

We will consider these two points in the order stated.

(*a*)

The City cannot bind its hands not to tax, or to exempt from taxes.

The sovereign State perhaps has the power to enact a binding contractual exemption from taxation, were it not prohibited by its Constitution, which, however, it is in Missouri: Const. 1875, Art. X, secs. 2, 6 and 7. The City of St. Louis is specially authorized by the Constitution to provide in its charter for levying taxes for municipal purposes, in such manner as is not inconsistent with the Constitution and laws. (Const. Art. IX, sec. 21; St. Louis vs. Bircher, 76 Mo. 431; St. Louis vs. Sternberg, 69 Mo., 289, 298).

But taxation (without which power the municipality ceases to exist), is an attribute of sovereignty that the legislature of this State has not, in fact, cannot authorize a municipality to contract away, any more than the police power. The legislature cannot delegate a power denied to itself by the Constitution. A contract by a City, attempting it, is to that extent simply *ultra vires* and void.

Judge Adams on preliminary injunction did not notice

the point, although urged, and Judge Finkelnburg disposed of it by saying that "the distinction between general taxes and so-called license-taxes must be borne in mind. The latter are not within the usual constitutional prohibitions." (Print. Rec., p. 160.)

We think both the State and Federal Supreme Courts are not in accord with this ruling in applying that view to this kind of a case, where the license-tax is for revenue purposes.

In Springfield vs. Smith, 138 Mo. 646, heretofore adverted to, the Supreme Court of Missouri *in banc*, says that a contract on the part of the City not to levy and collect a license-tax from a street railway company is *ultra vires* and void. That involved a $10.00 tax on each car of a street car company which held its franchise as these complainants do, and the company made substantially the same defenses and arguments as are made here. But the Court held the tax ordinance valid and applicable to the company, saying *inter alia*:

> "Conceding, for the sake of argument, that the tax imposed by the ordinance is for revenue purposes, and not simply for the purpose of police regulation, and conceding further that the ordinances of 1879 constitute a contract *quoad* the matters therein treated; if such contract, when properly construed, is an agreement on the part of the city not to levy and collect such tax thereafter, then such contract might, to that extent be held to be ultra vires and void, upon the authority of State vs. Railroad, 75 Mo. 208, and not within the protection of the Federal Constitution." The court then shows that no such exemption was intended, and decided the case on that theory, which is equally applicable here.

That for instance, the Missouri Constitutional provision

as to uniformity is applicable to a license-tax for revenue, and that ordinances discriminating between different sets of persons or companies engaged in the same business are void as in conflict therewith, has been expressly and directly held by the State Supreme Court.

St. Louis vs. Spiegel, 75 Mo. 145.
St. Louis vs. Spiegel, 90 Mo. 587.
See discussion and cases below under point (*b*).

And the applicability of this constitutional inhibition was directly applied by the Court of Appeals to a street-car revenue license-tax.

Kansas City vs. Corrigan, 18 Mo. App. 206, 215.

As to property taxation, the power to exempt has been often denied.

State vs. Railroad, 75 Mo. 208, cited by the Court in the Springfield case and held therein to announce a principle equally applicable to a street car license-tax, was one in which by ordinance the City of Hannibal attempted to exempt a railroad company from city taxes in consideration of $700 and of said company keeping its shops in the city limits. The Court held the attempted exemption void as beyond the charter powers of the city, and no defense against a suit for the taxes, saying amongst other things:

> "For though municipal corporations may make such contracts as their respective charters authorize, they cannot so contract as to surrender or embarrass their legislative or governmental powers, or prevent the full and complete performance of their public duties; duties which result from such powers, which are conferred upon municipal corporations for public purposes,

and for the public good. Such powers being in the nature of public trusts, are incapable of alienation or surrender. Dillon on Mun. Corp. 97 and cases cited. Among the most valuable and important of those public trusts and powers is that of taxation, without the exercise of which municipal government would cease to exist. . . . For if, for instance, it were allowable for a municipal corporation to abdicate its taxing power *pro tanto,* this would differ only in degree and not in kind from such abdication *in toto.* . . . Besides, the idea of taxation imparts equality of apportionment. . . . And it cannot be doubted that the exemption . . . either in whole or in part, casts an unusual and inequitable burden on the property of those who have not thus been graciously favored," etc. . . . Now, if it be true, as heretofore asserted, that the same constitutional prohibitions apply to towns, cities and counties as when imposed by the State and that exemption from and commutation of taxes . . . both are under the ban of the constitution, and if it be also true as heretofore decided by this court, that a city may successfully interpose the plea of ultra vires, when charged with having executed a contract (Cheeney vs. Brookfield, 60 Mo. 53), then it only remains to affirm," etc.

In Savannah Thunderbolt, etc., Ry. Co. vs. Savannah, 198 U. S. 392, it was claimed, as here, that under a contract the city had contracted away the right to collect an occupation tax from a street car company. The Court in holding there could be no such construction of the contract, said on p. 398:

> "As to the contract, if the city had attempted to bargain away its right to tax, probably it would have been acting beyond its power. Augusta vs. City Council, 83 Ga., 734, 743."

In People ex rel. Street R. vs. Tax Comr's, 174 N. Y.

417, loc. cit. 448 (affirmed by the U. S. Sup. Ct. in 199 U. S. 1) in passing on the claim of a street car company that its special franchise was exempted from taxes under certain ordinances the New York court said:

> "Such a stipulation would be void, for no municipality has power to withdraw property from the taxing power of the State or to provide by ordinance or contract that it shall be free for all time from the common burden which property generally has to bear."

(*b*)

Again, if the argument were sound (which it is not) that the City had exercised and exhausted its license-taxing power in imposing the conditions of percentage payments on gross receipts, or certain fixed sums, which should be regarded the same as annual license taxes on cars, such an attempt by the City would be void for the additional reason that there would be no uniformity in such a tax, but a different, special and invidiously discriminating license tax for each and every of the many independent constituent lines of the United Railways Company as assignee, and through which it holds. The City would have no power arbitrarily to charge one company or individual one price by way of a license, and another in the same business another price. The tax must be uniform upon all within the same class. Such a tax must be by general law, substantially uniform in its operation throughout the City, and not by specific, unequal, special, single and dissociated provisions applicable to different individual cases. If so it would be void, as contravening the Missouri Constitutional provision that taxes "shall be uniform upon the same class of subjects."

City of Kansas vs. Corrigan, 18 Mo. App. 206, is beautifully illustrative of this. It appears that in 1875 for the first time Kansas City was given power to "license, tax and regulate street railroad cars," and thereupon did so by an ordinance for revenue purposes. Prior thereto, in 1869, a street car company had received a franchise from that City to construct and operate its road over certain streets on certain conditions. The contention was that the license tax ordinance impaired the obligations of contract under the franchise ordinance by imposing increased burdens. The court held that the city could not have contracted away a power it did not then possess; also that the license tax "had to be uniform and fall alike upon all persons engaged in the same business," hence could not have been intended as within the franchise ordinance. The court says (p. 215):

> "The tax had to be imposed upon all alike. The plaintiff could not impose the tax upon one and not upon another company engaged in the same business. The power to impose such a tax in any other than a uniform manner the legislature itself did not possess, and therefore could not have granted to plaintiff. Giving to the ordinance of 1869 [i. e., the franchise] the construction asked by defendant, we hold that it was null and void in so far as such construction forms part of it."

Now the foregoing case dealt distinctly with a revenue license tax, yea, a tax on street cars under an identical clause as here in question, and distinctly held that in Missouri specific conditions in franchises, if regarded as in effect license taxes, would be void, if so considered, as contrary to the Constitution. The Constitution then in force was that of 1865, but the present Constitution contains a similar

requirement as to uniformity of taxes. (Const. 1875, Art. X, sec. 3.)

So also in St. Louis vs. Spiegel, 90 Mo. 587, and St. Louis vs. Spiegel, 75 Mo. 145, a similar principle was announced by the State Supreme Court, under the present Constitution, Art. X, sec. 3, providing that taxes "shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

In the former (90 Mo.) the ordinance which was pronounced void required a license tax of $50.00 on all owners of meat shops, and also provided that owners of shops in the new city limits could sell both at their shops and on their wagons, while owners in the old city limits could sell only at their shops. This was held such a discrimination as made the whole ordinance unconstitutional.

In the other case (75 Mo. 145) it is held that a license fee on the keepers of meat shops is a tax, and must be uniform within the territorial limits of the authority imposing it (Const. 1875, Art. X., sec. 3). A city ordinance, therefore, which requires a license fee of $100 in the old city limits and of $25 in the new, is void.

In this case the court in discussing whether this constitutional provision is applicable to a license tax, says:

> "Is the fee which the ordinance imposes as a prerequisite to obtaining a license, a tax? If it is, then the ordinance cannot stand against the prohibition of the Constitution. (p. 145) . . . That the license fee is a tax when imposed for the main purpose of revenue, is established by abundant authority [citing cases]. . . . In this case it is apparent at first blush that the license fee is imposed for the pur-

poses of revenue. That such fee is also imposed for the purpose of *regulation* does not deprive it of the salient characteristics of a tax. Regarding the license fee as a tax, does the ordinance which authorizes the collection of such fee conform to the constitutional provision contained in section 3 above quoted? Manifestly it does not." (pp. 146-147).

These decisions certainly show that Judge Finkelnburg did not correctly state the law when he says that the constitutional provisions do not apply to license taxes in a case of this kind, at least so far as the uniformity clause goes.

See also as pointing out the same principle Aurora vs. McGannon, 138 Mo. 38, 48.

Therefore, if complainants and the lower court were right and these franchise ordinances themselves operated as an exercise of the power of imposing license-taxes, a different tax would be applied to every person or company engaged in that business. Such a discrimination would clearly be void.

And if void, then, since these are the conditions under which complainants are authorized to do business here at all, it follows they would have no authority to operate whatever, and hence have no standing in court. An essential condition being void, the whole ordinance would be void. It was distinctly so held in St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Mo. 239, on p. 253, where the court observes:

> "As this city gave its consent solely on this condition, we think it very clear that if this condition was illegal, then plaintiff is entirely without right in the streets of Kirkwood."

See also in this connection Allegheny City vs. Ry., 159 Pa. St. loc. cit. 418-419.

Of course it must be remembered that we do not claim these provisions in the consent-ordinances are void. Because we do not concede that the conditions in the franchises to complainants' assignors are in fact or in effect license taxes; but we are trying to demonstrate the fallacy of that argument by showing, through such suggestions as above, some of the many inconsistencies to which its adoption would lead.

The complainants claim that the United Railways Co. is in effect paying a score or more unequal and different license taxes, contracted for by its constituent lines; perhaps in those instances where no contract-payments were conditioned, such particular lines are supposed to pay no license tax at all; or perhaps the idea is to subject to the provisions of ordinance 21,087 such part of United Railway cars as represent that proportion derived from companies which agreed expressly to abide by present and future general ordinances, and the rest not; perhaps further discriminations are to result against roads not yet built, etc.

The only safe and logical rule is to exclude the contract-ordinances for franchises as having nothing to do with license-taxes on street cars, and to apply the tax to every street car run on the streets of St. Louis.

In this connection is appropriate what this Court said in Railway Co. vs. Philadelphia, 101 U. S., 537, where a similar claim of exemption was made, under special ordinances, from the application of a general license-tax on street cars:

> "None of the other companies have any such immunity from increased taxation, and if construed to

have that effect in favor of the defendant company, it would have an extremely invidious operation at the expense of all other similar companies. Invidious exemptions are not favored, nor ought they to be, as they are in principle utterly opposed to the rule of equality, which ought always to prevail in imposing public burdens . . . Common burdens should be sustained by common contributions, regulated by fixed rules, and be apportioned, as far as possible, in the ratio of justice and equality . . . Viewed in the light of these suggestions it is clear that the State never made such a contract with the defendant company as that supposed." (p. 537.)

A moment's reflection negatives the idea that the power to license and tax cars is involved in the ordinances conferring the franchises.

POINT IV.

The immunity from taxation burdens would not pass to complainants.

Moreover, such an exemption (if created) even when the main grant is of rights, privileges and franchises to the grantee and its successors and assigns (but with no mention of "immunities" or its equivalent) will not pass with an assignment or transfer to the assignee or transferee. We do not care to take up space in elaborating this contention, but are content to refer to these authorities so holding:

Rochester Ry. vs. Rochester, 205 U. S. 236, collating the authorities.

Phoenix Ins. Co. vs. Tennessee, 161 U. S. 174, 180, *et seq.*

Keokuk Ry. vs. Missouri, 152 U. S. 301, 307, *et seq.*

Railroad vs. Georgia, 98 U. S. 359.

Turnpike Co. vs. Sanford, 164 U. S. 578, 586, *et seq.*
Railroad vs. Pendleton, 156 U. S. 667, 673.

POINT V.

The right to alter, amend or repeal.

(*a*)

Again, even if the argument were sound (which of course it is not) that the recited considerations for the right-of-way franchises were to be treated as if they were license-taxes, or operated to exempt from the City's charter power to tax street cars, then treating such provisions as license-tax burdens, the rights conferred would still in that respect be subject to the further charter provision (in force at the times and since these franchise ordinances were enacted) that every such grant is taken "subject to the right to amend, alter or repeal any such grant in whole or in part."

> Charter of St. Louis, Art. III, sec. 26, clause 11. That this clause applies to street railways is obvious (and is so recognized in State ex inf. vs. Lindell Ry., 151 Mo. loc. cit. 181, where it is cited in discussing the street railway laws of St. Louis).

Conceding for the argument that the franchises of these companies amount to a contract of exemption, yet since at the time of the adoption thereof there existed the paramount power to repeal, alter or amend, the alleged exemption or relief from future license-taxes may be revoked without impairing the obligations of the contract, because the paramount reserve power, which is treated as if embodied in the contract, deprives the contract of its irrevocable character,

at least with respect to such provisions as relief from license-taxation.

In Railway Co. vs. Philadelphia, 101 U. S. 528, where it was claimed that a street car company had an ordinance right to run cars at a license-tax of $30 per car, and a subsequent law raised it to $50 per car, it was held that no such contract existed, but that if there were a clear contract provision to that effect, the increase would be lawful because there existed a constitutional provision which must be regarded as part of the contract, conferring on the legislature the right of alteration, revocation or amendment of any charter in such manner that no injustice should be done. The Court said:

> "Even when the language of the charter is sufficient to amount to a contract, it was twice admitted by Mr. Justice Story, in Trustees of Dartmouth College vs. Woodward, that alterations and amendments may be made in the charter, where the power for that purpose is reserved to the legislature in the act of incorporation, 4 Wheat, 518, 708, 712" (p. 539). . . . "Vested rights, it is conceded, cannot be impaired under such a reserved power, but it is clear that the power may be exercised and to almost any extent, to carry into effect the original purposes of the grant and to protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corporation. Tested by these considerations, it is clear, even if it be admitted that the language of the charter is sufficient to impart a contract, that the power of the legislature under the Constitution is amply sufficient to justify that department of the State to pass the act raising the license for each car from thirty to fifty dollars" (p. 540).

In Fair Haven Ry. vs. New Haven, 203 U. S. 379, it was

held that a general law requiring street railways to pave between its tracks, amounts, in respect to companies whose charters contain other provisions, to an amendment authorized by a reserve power to alter, amend or repeal the original charter, and is valid if imposed in good faith and not in sheer oppression. The Court refers to a number of earlier decisions, of one of which it says:

> "All the cases are reviewed and their principles affirmed in Stanislaus County vs. San Joaquin C. & I. Co., 192 U. S. 201, and water rates fixed by the Board of Supervisors of the county of Stanislaus under a law of the State, sustained though the income of the company was reduced from one and a half per cent. per month to six per cent. per annum."

In San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, it was held that where after a new constitution is adopted a railway chartered prior thereto is consolidated or accepts new privileges the new constitution governs; and that even if an ordinance extending a franchise is a contract, it is still subject to the control of the legislature if the constitution then in force provides that no irrevocable grants by the legislature can be made and that privileges granted under its authority remain under its control; and a reduction of fare by statute from the amount theretofore permitted was sustained. The only limitation apparently being that "the legislature could not reduce the fares to a confiscatory amount or to an amount that would render it unprofitable to operate its road."

The case of State ex rel. vs. Hilbert, 72 Wis. 184, is in point here (assuming as before stated the complainants' erroneous supposition that the amounts fixed in the franchise ordinances are license taxes). The constitution of

that State reserves a power of altering, repealing, etc. An ordinance granted a street railway its rights with the provisions that:

> "the rate of fare for any distance shall not exceed five cents, except, etc.; but, before any car or carriage shall be used or operated on said railway, said grantees shall pay to the said city a license fee of $10.00 per annum for each car or carriage; said license fee to be paid and a license for such car to be obtained," etc.

It was held that there was a right in the city, under the reserve power to alter or repeal, to increase the tax to $15 per car, the court saying that in the absence of such a provision they would hold there was no contract not to increase such amount.

In Citizens' Bank vs. Owensboro, 173 U. S. 636, on p. 644 the court announces the law on this point in this clear statement:

> "The elementary rule is that if at the time a corporation is chartered and given either a commutation or exemption from taxation, there exists a general statute reserving the legislative power to repeal, alter or amend, the exemption or commutation from taxation may be revoked without impairing the obligations of the contract, because the reserved power deprives the contract of its irrevocable character and submits it to legislative control. The foundation of this rule is that a general statute reserving the power to repeal, alter or amend is by implication read into a subsequent charter and prevents it from becoming irrevocable." (p. 644.)

"For it is well settled that parties to a contract are to be held to have embodied in it the existing law relating to the subject of the contract" (per Barclay, J., in St. Charles vs.

Hackman, 133 Mo. loc. cit. 642); and hence the tax was one "subject to which power the company took the franchise granted" (138 Mo. p. 657); and as said in Railroad vs. Georgia, 98 U. S. l. c. 365:

> "These provisions become, in substance, a part of the [company's] charter. . . . As the greater power includes every less power which is a part of it, the right to withdraw a franchise must authorize a withdrawal of any right or privilege. . . . Hence the exemption from taxation, except to the extent and in the mode designated in the charter could be withdrawn without any violation of the State's contract."

In Street Railway Co. vs. Sioux City, 138 U. S. 93, it is held that:

> "No question can arise as to the impairment of the obligation of a contract, when the company accepted all its corporate powers subject to the reserved power of the State to modify its charter and impose additional burdens. (p. 108) . . . There is nothing in the ordinance of the city council which takes away the power to impose additional taxes on the company."

It may be true that there are some things of which the complainants could not under this power be deprived, perhaps the right to charge a reasonable price for carriage of passengers, but immunity from taxation is not one of them. As the Court says in Turnpike Co. vs. Sandford, 164 U. S. loc. cit. 587 (quoting from an earlier case):

> "There are positive rights and privileges without which the road of a corporation could not be successfully worked, but immunity from taxation is not one of them" (p. 587).

This is the distinguishing feature which renders inapplicable the case prohibiting reduction of fare, upon which complainants rely (Detroit vs. Ry., 184 U. S. 368) and in which it was said that "the rate of fare is among the most material and important of the terms imposed . . . in exchange for the city's consent" . . . etc., (p. 384). But that case is not at all in point; after agreeing that the fare should be five cents the city tried to cut it down to three; no question of immunity from taxation for license was involved. The *statutory* reservation of the power to alter, amend or repeal laws was not involved at all, and was held not to have been attempted to be exercised, because no statutory action whatever was taken; and the *municipal* reservation of power only went to prescribe rules and regulations for the operation of the road; no reference to altering rates of fare was therein made, but rather on the contrary the city's power was expressly limited, after giving its consent, not to make any regulations or conditions destroying or unreasonably impairing the franchises so granted. And yet the city there undertook to reduce the fare to be charged, which it had expressly contracted with the company should be five cents. To alter a contract permitting the charge of five cents per passenger, made in pursuance of an express authority so to contract, under a *contractual* power, and *without* a reservation authorizing an alteration in such amount of the fare, but only a reservation going to police powers, is a vastly different thing from a law requiring payment of a fair license for running a car, under the *taxing* power and not under the contractual consent power, and *with* a reservation of the right to repeal, alter or amend.

(*b*)

A further important consideration in this connection is that at all times when any of the right-of-way ordinances were enacted which provide for the payments claimed to operate as immunity from the street car license-tax, the general ordinance existed, formed part of the charter of the railroads, and was in fact complied with, fixing a tax of $25 per annum on each car; and the city certainly had the right to amend such general ordinance by changing the amount, under its powers to alter, amend or repeal any grant in whole or in part, even if it had not power to so do otherwise.

State ex rel. Ry. vs. Hilbert, 72 Wis. 184, 193.
Fair Haven Ry. vs. New Haven, 203 U. S. 379, 388-389.
Stanislaus Co. vs. San Joachin Co., 192 U. S. 201, and cases there cited.

POINT VI.

The ordinance is uniform and does not deny equal protection of the laws.

(*a*)

That the *form* of ordinance 21,087, being a graduated license-tax, instead of a fixed sum, is not for that reason obnoxious to any objection, has already been pointed out and the authorities cited in this argument under Point I. (See *ante*, pp. 55-59.)

(*b*)

There is no merit whatever in the contention that ordinance 21,087 denies complainants the equal protection of

the law on the ground that it discriminates between street railroads and other public conveyances such as steam roads, automobiles, hacks, etc.

When a city having power to tax vehicles, trades, callings, etc., taxes alike all persons engaged in such business, such taxation is equal and uniform.

It is so held by the Missouri cases on license-taxes; without more fully detailing the same, we content ourselves on this point by referring the Court to these cases:

Aurora vs. McGannon, 138 Mo. 38, 48.
St. Louis vs. Bowler, 94 Mo. 630, 634.

In Virginia this rule has been applied to a license-tax on street cars.

Newport Ry. vs. Newport News, 100 Va. 157, 161.

The decisions of this Court are to the same effect.

It is only necessary to refer to the late decision holding that street car surface and subway roads (otherwise alike) by this difference alone authorize different amounts and methods of license-taxes. So held in Metropolitan Street Ry. Co. vs. New York, 199 U. S. 1.

And in another recent case it is held that a classification which distinguishes between an ordinary street railway and a steam railroad, is not such a classification as to make the tax void under the 14th amendment, because it denies the street railway the equal protection of the laws or deprives it of its property without due process of law.

Savannah, etc., Ry. vs. Savannah, 198 U. S. 392.

(*c*)

But while there is nothing in the argument that Ord.

21,087, wholly general in its provisions, is not uniform, the mere fact that such an argument is made accentuates and emphasizes how absurd it would be to regard as license-tax provisions each and every of the different individual special or contract ordinances conferring the municipal franchises on complainants' many assignors, as complainants inconsistently maintain. See on this point *ante* under point III, sub-division (*b*), pp. 98 to 103, and authorities there cited.

POINT VII.

The ordinance is not oppressive, unreasonable, or confiscatory. Neither can it be attacked in this case on that ground.

The complainants in the present case do not press the claim very strongly that the ordinance is unreasonable, oppressive or confiscatory.

True, they allege in the bill that (print. rec., p. 23):

> "Said ordinance, if enforced according to its terms, will deprive these complainants of revenues amounting to $150,000.00 per annum, which are absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by them, and to the proper discharge of the obligations imposed upon them by the special ordinances hereinbefore set forth."

But the answer denies these allegations specifically and then continues (print. rec., p. 33):

> "and defendant states that if said allegations were true it would be owing to the obligations incurred by complainants to pay dividends on preferred stock, interest on mortgages and other heavy expenses based on a fictitious valuation of their assets and capital stock

which is by them treated and held out to stockholders, bondholders and others at an amount many millions of dollars above its actual and honest value; and that the business of said companies and their receipts yields very large profits upon the basis of the actual assets invested and yields large profits even upon the fictitious valuation of assets above stated, far in excess of the amounts required for the purposes stated by complainants," etc.

Complainants declined to accept the gauntlet thus thrown at their feet. They silently ignored the issue tendered.

Not a word of testimony was offered in support of these charges by complainants, nor is the subject touched in the agreed statement. There was, therefore, of course nothing for defendant to rebut or refute, so that there is nothing for the Court to consider on this point except the ordinance itself.

It is certainly reasonable or its face.

The franchises "to be" and the permission by the license "to do" a street railway business in the greatest metropolis west of the Mississippi, covering an immense territory and containing about 700,000 people and constantly and rapidly increasing in population, is certainly of great value. When such business is conducted on an honest investment of capital, it must yield great profits, and it would not lie in the mouth of complainants to plead absence of, or small dividends on the ground of watered capital, and excessive bonding. The amounts paid by way of interest on its many millions of bonds is alone immense.

The amount of its business is suggested by its statement that under the ordinance by paying one mill per pay passenger it will "deprive" the complainants of $150,000.00 per

annum, thus being equivalent to an allegation that they are *collecting fare from one hundred and fifty millions of passengers every year!*

There is no evidence of how many cars these complainants operate, so we cannot tell how much the average tax on a car would amount to.

But for instance in the little town of Wyandotte, Kansas, a street car tax of $100.00 per annum per car was enacted (some time prior to 1884 when the cause originated), and sustained as valid in Wyandotte vs. Corrigan, 35 Kans. 21. The population of that town in 1880, the nearest date a United States census was taken, was only 6,149 inhabitants. A tax of $100.00 would, if levied at one mill per passenger, require the carrying of 100,000 persons.

That is to say at the rate fixed by our ordinance 21,087 the Wyandotte car tax of $100.00 would only be equalled if each inhabitant in that village were carried more than sixteen times on *each* car, otherwise the rate would be higher than at the rate fixed here.

The Wyandotte case was followed with full approbation in Missouri in the case of Springfield vs. Smith, hereinbefore several times referred to.

It is certainly very much less burdensome to pay a mill per passenger in a metropolis like St. Louis than a fixed charge of $100.00 per year per car in a little town like Wyandotte.

Remembering that passenger traffic in St. Louis is not distributed evenly through time or locality, it would seem that a proper regard for the convenience and comfort of the people of St. Louis would demand at least one car on the average for every 100,000 persons carried per annum, which would only make the tax $100.00.

However that might be, we think for a city like St. Louis

a car tax two, three or four times that much would not be unreasonable. The $25.00 rate of tax in force when the predecessors in title of the complainants began to operate (ord. 4371, for instance, was approved in 1859) was at a time when St. Louis was in knee-breeches and glad to encourage and get any kind of street car service; but now that the city has grown to its present magnitude and the street-car traffic is of the proportions indicated, it is high time that the car tax be increased to some commensurate amount.

If the companies carry more passengers than one hundred thousand on the average in each car, which would make the tax $100.00, we suggest that the method adopted by the city in fixing the tax is a cordial invitation to the complainants to reduce the tax on each of their cars by increasing the number of cars for the public comfort.

At all events the complainants declined to submit any data from which we could estimate the tax on each car, and this court will not annul an ordinance on conjecture and guess work. But the important consideration showing the reasonableness of the ordinance is that there is permitted the use of many miles of the streets of St. Louis by the construction of tracks everywhere, and the running of cars thereover. The use of the streets by cars is an important privilege.

The city has a right to require the companies to contribute to the burden of its government and management, in the benefits of which they so largely share. A license tax of one mill for every pay passenger is certainly not excessive on its face. If the car carries few passengers, or is unused most of the year, it pays proportionately less tax. If jammed with people it pays more, as it ought. As seen by the quotations from the decisions (cited in this "Argu-

ment" under point I. and in our "Points and Authorities" under VIII.), this method is highly commendable and preferable to the imposition of a fixed sum for every car under all conditions, and whether used on one or 365 days in the year.

We fail to see the force of the argument made by Judge Adams in the court below and adopted by Judge Finkelnburg on final hearing, that if the city can impose a mill tax license, alleged by the judges to be equivalent to two per cent. on the gross receipts, that then "it can exact 50 per cent. or more, and of course can utterly destroy the value of complainants' property."

That argument proves too much. For by the same measure it would annul the right to impose *any* license tax; and this whether it be a graduated one or a fixed amount, such as complainants admittedly paid at all times before the present ordinance; and also no matter how small such license tax might be. In other words it simply, by judicial fiat, annuls the conceded charter-given power to "license, tax and regulate street cars." Not only that, but such reasoning, if sustained, wipes out all power to impose a tax on any kind of vehicle, conveyance, business or calling, for by the same argument, it is within the power of the city to destroy any class of property or prohibit any kind of legitimate business, if it but chooses to make the tax or license high enough. The court below did not rule or say the *tax in question* is excessive, but says if the power to tax here is admitted, it *might* some time be exercised to exact an excessive tax, and therefore denies the right.

The court argued lack of power from possibility of abuse of that power.

It avowedly supposes a case not before it, and decides the supposed case.

It is a sufficient answer that no abuse is shown in the present case.

This court has repeatedly demonstrated the fallacy of the lower court's argument.

The possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist.

In Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, on pp. 376-377, this Court after upholding the right to impose a license-tax on ferries, says:

> "Counsel for plaintiff in error contend that if the power of the city of East St. Louis to exact a license fee of $100.00 from every ferry-boat is conceded, the city could double or treble the fee at will. It is sufficient to say, in reply to this, that it does not follow from the fact that a power is liable to abuse, that it does not exist. If the power is abused, the remedy is with the legislature."

In Powell vs. Pennsylvania, 127 U. S. loc. cit. 686, the court says:

> "It is argued in behalf of defendant that if the statute in question is sustained as a valid exercise of legislative power, then nothing stands in the way of the destruction by the legislative department of the constitutional guarantees of liberty and property. But the possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist."

We are here assuming of course that there is no express immunity from taxation granted to complainants, and are

discussing the question whether ordinance 21,087 is on its face so unreasonable and confiscatory as to work a destruction of the rights granted by the city.

Within these limits the remarks of the court in the case of Providence Bank vs. Billings, 4 Peters loc. cit. 563, are valuable:

> The power of taxation "resides in government as a part of itself and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right, that it must bear a portion of the public burthens; and that portion must be determined by the legislature. This vital power may be abused; but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the State governments. The interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally."

With the same premise as that above made to the foregoing case, we submit the following additional authorities:

Given the power (as it is) to levy the tax or fix the license, the argument that it operates oppressively is a consideration which is properly addressed to the municipal assembly and not the courts.

Speaking of a license requirement by the City of St. Louis for a garbage wagon, the Supreme Court says in St. Louis vs. Weitzel, 130 Mo. 600, 620:

> "And it is a matter of no importance that the particular license tax be imposed directly on the occupation

or whether it be imposed on the implements by means of which the occupation is conducted; such matters of detail rest in the discretion of the law-making power. If the power to levy the tax be conceded, if it operates oppressively, this, speaking in general terms, is a consideration, which is properly addressed to the municipal assembly and not to the courts. St. Paul vs. Colter, 12 Minn., 41. We discover, however, nothing oppressive in an ordinance which imposes the same burdens on all who pursue the same occupation, as must be confessed is the case here."

In the case of St. Louis vs. Green, 7 Mo. App. 468 (affirmed in this respect in 70 Mo. 568), referring to the exaction of a license tax on vehicles in St. Louis, the court says:

(p. 478-479). "The conclusion is that the tax in question, being expressly authorized by the Legislature, and not being forbidden by the organic law of the State, is therefore not void, but has the force of law; and if it be oppressive, the remedy lies with the General Assembly and the Municipal Council, and not with the courts. St. Paul vs. Colter, 12 Minn., 49."

This case was followed in Kansas City vs. Trieb, 76 Mo. App. 478, where an ordinance required wholesale milk dealers to procure a $25 license before doing business, the court saying:

"It is to be inferred that the court declared the ordinance invalid because unreasonable. The rule is that where the legislature in terms confers upon a municipal corporation the power to pass ordinances of a defined character these cannot be set aside by the courts because they deem them to be unreasonable or against sound policy. The charter of the plaintiff city has the force of a legislative enactment."

In Home Ins. Co. vs. N. Y., 134 U. S. 594, speaking of taxation of insurance companies according to dividends paid and upholding the same, the Court says:

> "No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows. . . . Its action in this matter is not the subject of judicial inquiry in a Federal tribunal. . . . 'The manner in which the value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion . . . our only concern is with the validity of the tax, all else lies beyond the domain of our jurisdiction' . . . If any hardship or oppression is created by the amount exacted, the remedy must be sought by appeal to the legislature of the State; it cannot be furnished by the Federal tribunals."

In 21 Am. & Eng. Enc. L. (2nd Ed.) speaking of occupation and license taxation the law is thus announced:

> "The wisdom or expediency of legislation in regard to taxes and licenses rests with the legislative branch of the government alone and the courts will not interfere, so long as the law imposing the license or tax is constitutional" (p. 776) . . . and again: "Where a city has power to prohibit, or power to license or tax for revenue, the courts will not interfere on the ground that the fee required is excessive" (p. 790).

The argument of complainants and of the Court below is in effect, that to permit the State (through the city) to tax this company by a license-tax for the privilege granted by its charter, is to destroy that privilege.

But the answer is that the company took the charter subject to the same right of taxation in the State that applies to all other privileges and all other property. If the com-

panies wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business, they should have required a provision to that effect in their charters. The Constitution of the United States does not profess in all cases to protect from unjust and oppressive taxation.

This feature of the case has been already discussed in this argument in connection with Point I, *ante* pp. 49, 76, to which we refer so as to avoid repetition here.

The cases there cited expressly so holding are:

Memphis vs. New Orleans, 109 U. S. 398, 400.
New Orleans Ry. vs. New Orleans, 143 U. S. 192, 195.
Metropolitan Street Ry. vs. New York, 199 U. S. 1, 40.
Newport News Ry. vs. Newport News, 100 Virginia, 163.
Prov. Bank vs. Billings, 4 Peters, 514, 563.

Contracts are always made in reference to the possible exercise of rightful authority of the legislative branch. And as this highest court has said (13 Wall., p. 660): "All contracts are inherently subject to the paramount power of the sovereign, and the exercise of such power is never understood to involve their violation, and is not within the provision of the National Constitution which forbids a State to pass laws impairing their obligations. The power acts upon the property which is the subject of the contract, and not upon the contract itself."

Ordinance 21,087 is simply one by which it is sought to obtain, under authority duly conferred, a portion of the necessary revenue for the government of the city. In the

benefits of that government complainants largely share, and to its burdens they ought therefore also to contribute their just share. They are put simply on a par with hundreds of other vocations, trades, and owners of vehicles and carriers. Their franchise rights are not touched.

No part of the grant is changed, no stipulation altered, no payment called for by any contract increased, nothing exacted from the owner of the franchise that is not exacted from the owners of vehicles generally. No blow is struck at the franchise, as such, for it remains with every right conferred in full force; the street car companies are only required to contribute their share to the support of government.

Summing up.

In conclusion, we think the following has been established:

(1) The City of St. Louis is authorized to impose a license-tax on street cars.

(2) This it may do in the graduated form assumed by ordinance 21,087 here in question, which is a general ordinance.

(3) This general license-tax is imposed under Article III, section 26, clause 5, of the City Charter and not under Article X thereof.

(4) But under Article X of the Charter were imposed the conditions and terms in the *special* or franchise ordinances calling for payments of certain gross sums or percentages on gross receipts, fixing rates of fare, etc., which

are pleaded and urged by complainants as contracts exempting them from the general license-tax under ordinance 21,087, or if not, then as being in themselves an exercise of the City's right to impose a license-tax and therefore exhausting its power in that respect, so that ordinance 21,087 does not apply to them.

(5) Said terms and conditions in these special or franchise ordinances instead of being an exaction of a license-tax on street cars under said Article III, were contractual considerations exacted by the city under said Article X for the franchises or rights-of-way.

(6) The City under the Constitution and Charter had a perfect right to impose such conditions without surrendering its power to tax the cars.

(7) In so granting the rights-of-way or franchises it did not in fact surrender its right to impose the license-tax on cars.

(8) The special or franchise ordinances cannot, under well-recognized legal rules of construction, be construed as surrendering, or exercising and thereby exhausting, such power.

(9) The street railways themselves did not so construe them, and did for many years pay a license-tax on each car independently of the special or franchise-ordinances.

The above propositions are conclusive in favor of these appellants. But there may be added these:

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(10) If said conditions in the special or franchise ordinances were (as erroneously claimed) attempts to fix in

each case a license-tax, they would be void as transcending the State constitutional provision requiring uniformity; such a construction cannot stand.

(11) If the City had attempted to exempt the companies by contract from license-taxes, the attempt would be void under the Missouri Constitution as a divestiture of an inherent attribute of sovereignty, and a prohibited exemption from taxation.

(12) If there were such attempted exemption it would not pass to complainants under the assignment from the exempted grantors.

(13) If the conditions in the franchise-ordinances really were license-taxes, then they could be amended under the charter provision that the grant was taken subject to the reserve power of the City to alter, amend or repeal the same in whole or in part.

(14) The ordinance 21,087 is uniform.

(15) The ordinance is fair; it is neither unreasonable, oppressive nor confiscatory; neither can this question be raised in this cause.

It is respectfully submitted that the decree should be reversed, the injunction dissolved and the bill dismissed at the cost of complainants.

CHARLES W. BATES,
WILLIAM F. WOERNER,
Solicitors for Appellants.

Chas W Bates
Wm F Woerner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

NO. 193.

THE CITY OF ST. LOUIS,

Appellant,

vs.

UNITED RAILWAYS COMPANY OF ST. LOUIS AND ST. LOUIS TRANSIT COMPANY,

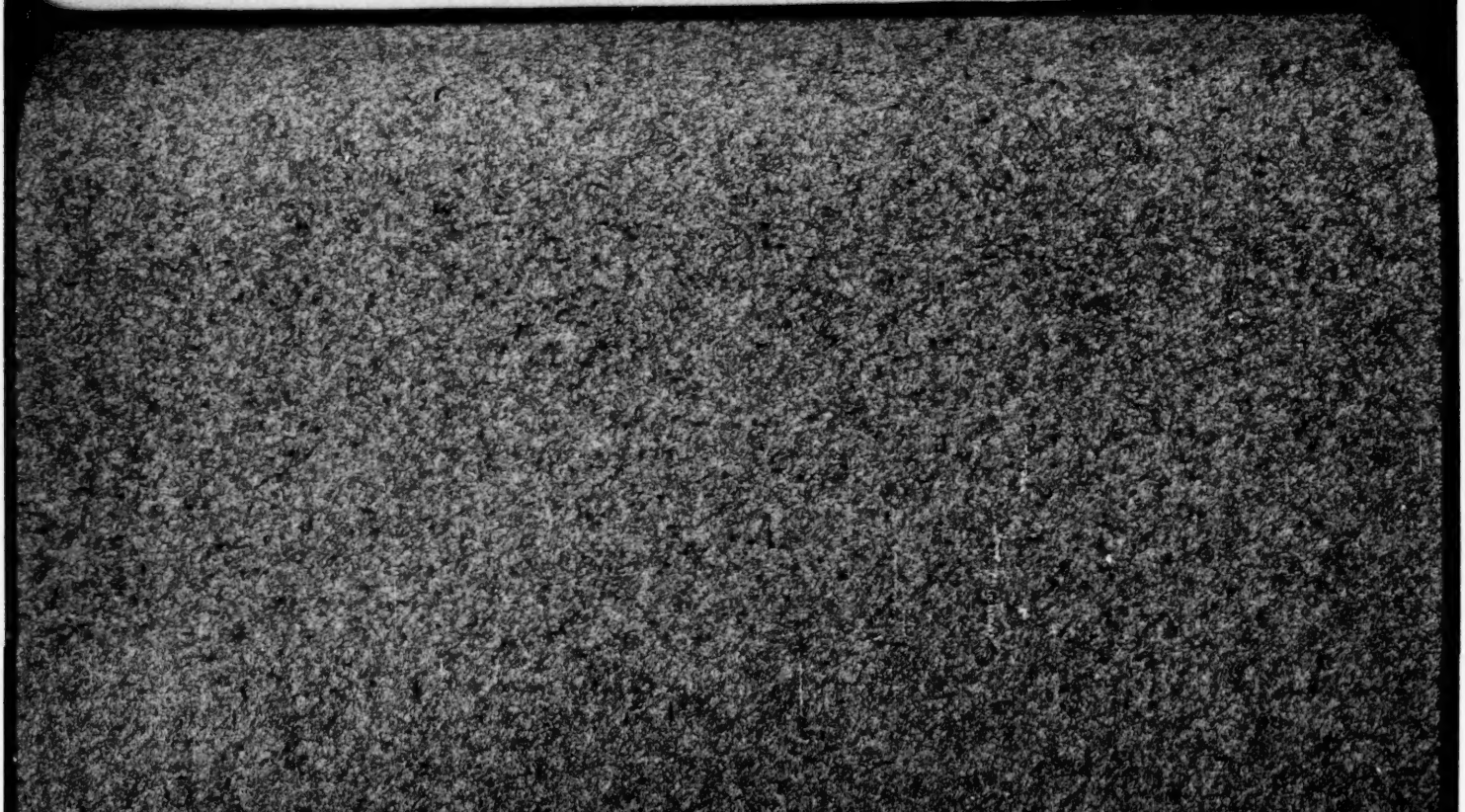
Appellees.

No. 20,818.

APPELLEE'S BRIEF.

HENRY S. PRITCHETT,

Of Counsel for Appellees.



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THE CITY OF ST. LOUIS,
Appellant,
vs.
UNITED RAILWAYS COMPANY OF ST. LOUIS AND ST. LOUIS TRANSIT COMPANY,
Appellees.
No. 20,519.

APPELLEES' BRIEF.

This is an appeal from a decree awarding a permanent injunction against the City of St. Louis, from enforcing the provisions of an Ordinance, which it is claimed impaired contracts theretofore entered into between the City of St. Louis and appellees, their assignors and predecessors in right.

The case is most clearly and tersely stated by Judge Adams in his opinion, awarding a temporary injunction upon the bill and answer, as follows:

> "The complainants are corporations engaged, one as lessor and the other as lessee, in operating street cars over and along the streets of the City of St. Louis. They secured their rights by ordinance in the nature of contracts entered into

between their assignors, or predecessors in right, and the City of St. Louis. In all these ordinances, or contracts the city in terms granted to the 'railway companies their licensees, successors and assigns, permission and authority to construct maintain and operate' railroad tracks on and along certain streets and alleys, particularly specified in each ordinance. This grant was made in consideration of certain terms, conditions and stipulations found embodied in the several ordinances. Among them are the obligations imposed and consented to by the several assignor railroad companies. (1.) To commence and complete the work of laying down the tracks and installing the roads within certain specified periods. (2.) To grade the streets from curb to curb. (3.) To construct and keep in repair that portion of the street lying between the tracks and twelve inches outside thereof. (4.) To cause cars to be run day and night at certain intervals named in the ordinances. (5.) To pay certain stipulated sums of money, or certain percentages of the gross earnings of the several companies to the city each year during the continuance of the privileges specified in the contract.

After the several assignor companies had constructed their roads, graded and constructed the streets, made provisions for operating the cars according to the schedules specified, and had been paying the stipulated yearly sums to the city as required by the contracts, and after all of the assignor companies had sold and transferred their rights and privileges, so acquired from the city, to the complainant companies, the city of St. Louis on March 25, 1903, by and through its Mayor and Municipal Assembly enacted an ordinance purporting to amend the general ordinances constituting the contracts already referred to.

This ordinance in substance and effect, among other things, enacts: That all persons, co-partnerships, corporations, associations, or companies engaged in the business of transporting passengers from one point to another, within the city, for

hire, shall pay a license to said city, and further enacts: That they 'shall pay the License Collector a quarter license for each and every car used by them in transporting passengers.' *** 'The amount of each quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during said preceding period of three months.'

This same ordinance approved March 25, 1903, provides forfeitures and penalties for any failure on the part of any railroad company to comply with its terms.

The bill shows that the defendant city is threatening to enforce this ordinance, and to exact from the complainants the license fee of one mill for every pay passenger as required by the ordinance, and is also threatening the institution of criminal actions to enforce the penalties prescribed by the ordinance. This license fee, as is alleged, is the equivalent of 2 per cent of the gross earnings of the complainant companies.

The prayer of the bill is to enjoin the defendant city from enforcing this ordinance on the ground that its enforcement would impair the obligation of the contracts under which the subsidiary companies and the complainants, their assignees, accepted their grants from the city."

This summary of ultimate facts was not changed at the final hearing, which was had upon a stipulation of facts which merely added in detail what appeared more briefly in the bill and answer.

For the purpose of discussing the legal question involved, it would be unprofitable to take up each ordinance which is claimed was a contract between the City of St. Louis and the appellees, and their predecessors, for they are all to the same substantial effect. We will illustrate the proposition, however, by ordinance No. 19,429, on page 100 of the record, authorizing the Lindell Railway Company to construct and operate certain lines of railway which were acquired by the

appellees and which lines comprise perhaps the largest share of the mileage of the appellees' system of street railway.

Section 1 of this Ordinance grants permission and authority to the "Lindell Railway Company, its lessees, successors and assigns, to extend, construct, maintain and **operate** railroad tracks on and along" certain streets, alleys and public highways specifically enumerated in Section 2 of the Ordinance.

Section 3 authorizes the operation of the lines of railway which it is authorized to acquire, by overhead wires or underground subway.

Section 4 fixes **the rate of speed at which cars may be run on the different lines.**

It also provides:

> "Cars shall be run over the said lines of railroad hereinbefore specified, every day in the year during the continuance of the franchise granted by this ordinance, between the hours of five-thirty o'clock a. m. and seven o'clock p. m., at intervals of not more than ten minutes; and between eight p. m. and midnight, at intervals of not more than fifteen minutes; and between midnight and five-thirty a. m., at intervals of not more than one hour."

Section 6 authorizes the acquisition by purchase or lease of certain lines of street railway therein enumerated, together with all of the rights, privileges and franchises which have heretofore been granted to such companies; and also the rights, privileges and franchises granted to said Lindell Railway Company by the City of St. Louis and now in force, including such as are conferred by this ordinance, and shall thereafter maintain **and operate** the lines of railroad so acquired as one entire system for and during a period ending the **thirty-first day of December, 1942,** to which date all said rights, privileges and franchises, are extended.

The second paragraph of this section is literally as follows:

"Said Lindell Railway Company shall, in lieu of all payments now required of it under any and all previous ordinances, and such as is now or may by ordinances hereafter passed be required of any railway company whose tracks and property it is hereby authorized to acquire, on the first days of January and July, in the years eighteen hundred and ninety-nine and nineteen hundred, pay to the City of St. Louis the sum of seven thousand dollars; and thereafter the said Lindell Railway Company shall, on said first day of January, in the year nineteen hundred and one, and on the first day of July of said year, and on the first days of January and July of each year thereafter until the first day of January in the year nineteen hundred and six, pay into the treasury of the City of St. Louis the sum of fourteen thousand dollars, and on the first day of January and July in the year nineteen hundred and six, and on the same days in each year thereafter, until and including the first day of January in the year nineteen hundred and fourteen, the sum of sixteen thousand dollars; and on the first day of January in the year nineteen hundred and fifteen, and on the same day in each year thereafter, until and including the first day of January in the year nineteen hundred and twenty-four, a sum equal to three per cent of the gross earnings of said company during the preceding year; and on the first day of January in the year nineteen hundred and twenty-five, and on the same day of each year thereafter, until and including the first day of January in the year nineteen hundred and thirty-three, a sum equal to three and one-half per cent of the gross earnings of said company during the preceding year; and on the first day of January in the year nineteen hundred and thirty-four, and on the same day in each year thereafter until and including the first day of January in the year nineteen hundred and forty-two, the said Lindell Railway Company

shall pay into the City Treasury a sum equal to four per cent of the gross earnings of the said Company for the preceding year, and shall on the thirty-first day of December, nineteen hundred and forty-two, pay an additional sum equal to four per cent of gross earnings for the year nineteen hundred and forty-two; which said several sums said Lindell Railway Company, its successors and assigns, in consideration of the rights and privileges granted by this ordinance, hereby agree to pay to the City of St. Louis at the times they respectively shall become due and payable as herein provided. And said company shall file with the Comptroller of the City of St. Louis on the first day of January in each year beginning with the year nineteen hundred and fifteen, a full and complete statement of the gross earnings of said railway company, and of any other company or companies which it may lease or acquire for the preceding year, subscribed and sworn to by its president and secretary.

In case of default in the making of any of the payments herein provided for, should such default continue for a period of thirty days, the City of St. Louis shall have the right, through the action of the Mayor and Comptroller, to declare a forfeiture of all the rights, privileges and franchises herein created; and thereupon such declaration having been made, said rights, privileges and franchises shall at once cease and terminate."

The third paragraph authorizes it to connect its tracks with other lines which it may cross, and **operate its cars** over lines so connected; and in addition to **passenger cars, may run over and upon any of said lines, ambulance, funeral and United States mail cars, and cars for the transportation of household supplies,** excepting coal.

The fourth paragraph fixes the **rate of fare** at five cents for adults and two and one-half cents for children under the age of twelve years; and also requires the

company to give to each passenger who has paid the regular fare a transfer ticket entitling him to a continuous passage from the point where the transfer is made from one branch of its railway to others at certain designated points.

Section 7 requires the filing of a written acceptance and a bond in the sum of Fifty Thousand Dollars, to hold the city harmless from any damages **by reason of failure to comply with the terms and conditions of the ordinance.**

It is conceded the appellees have paid all the taxes assessed or levied against them, for all city and state purposes, and the payments imposed by the several ordinances referred to in the bill.

Under the terms of the several ordinances granting to appellees and their predecessors the right to construct and operate railways, as shown by those ordinances, the appellees paid during the year 1907, the sum of $131,647.31. If the ordinance here questioned should be enforced, the appellees would have been required to pay, in addition to this sum, the sum of $216,799.63 for the carriage of 216,799,638 pay passengers.

Judge Adams, on a motion for temporary injunction, and Judge Finkelnburg, on final hearing, held that these several ordinances were not only grants of the right to lay down the tracks in the streets of the City of St. Louis, but also were the grant of a license to operate cars over these tracks during the period and for the sum stipulated to be paid in the several ordinances and they constituted contracts between the City of St. Louis and the assignors and predecessors in title of the appellees, which ordinance No. 21,087 (Record p. 43), enacted on March 25, 1903, if enforced against the appellees as the City claimed the right to do, would impair.

POINTS AND AUTHORITIES.

I.

The City of St. Louis had the power to grant the right to construct railways in the streets of the city; and the right to operate cars thereon for a definite period and a specific sum, payable as might be agreed. It might do both in a single ordinance and such an ordinance when accepted by the grantee would become a binding and unalterable contract. This we claim it did by the several ordinances pleaded and put in evidence.

Detroit v. Railway Co., 184 U. S. 368;
Stearns v. Minnesota, 179 U. S. 223;
Art. III, Sec. 26, Subdivision 5 and 11, City Charter;
Art. IV., City Charter.

II.

The charter reservation of the right to alter, amend or repeal is not properly under discussion, because the ordinance which impairs the right does not pretend to be an amendment, alteration or repeal of the special ordinances granting the several rights to the different companies; and if it did, the right does not exist in such cases.

Art. 111, Sec. 28, City Charter;
Ruschenberg v. Railway Co., 161 Mo., 70;
Detroit v. Railway Co., *supra;*
Stearns v. Minnesota, *supra.*

ARGUMENT.

The appellant discusses many questions which appear to us to be unimportant and to lie entirely outside of the controlling proposition of the case. We may concede, for the purposes of this case, the city has a right to exact an occupation or license tax and that it may exercise it or withhold it. We do not care to debate whether it may surrender it; we claim if it had the power, it has exercised it in the grant by the several special ordinances pleaded in the bill, as the Judges who had to do with the case below held, and that having granted the licenses and enjoyed the income, it cannot, before the expiration of the period of the grant, impose additional burdens upon the licensees or their successors.

Concerning this subject, Judge Adams said, referring to the different provisions of the City Charter:

> "The right 'to construct and operate' is conferred in terms admitting of no doubt. The license which is essentially an occupation tax is, in my opinion, also fixed in each of the ordinances. The several original ordinances or contracts clearly mean that the city exacted, among other things, certain quarterly or yearly payments of money to be made to it by the railroad companies as a consideration for the grant by it of the right to occupy and use its streets for the purpose of laying down, maintaining and operating railroad tracks thereon. The law nowhere commands that the license fee as authorized by the fifth subdivision in question shall be for annual or other terminal occupation. And I perceive no reason why the city may not at the outset fix such a license for the full term of its grant. This is what I think it 'did'

in and by the terms and stipulations of the several ordinances in question. * * *

My judgment is that the city exercised its power in the original ordinances or contracts. It both granted the right-of-way and fixed the terms upon which the complainants and their predecessors might operate their cars. These original ordinances were therefore licenses within the meaning of Section 26 subdivision 5th of Article 111 of the Charter, and conferred the right upon the complainants and their predecessors to use the streets of the city specified, for and during the terms therein named. * * * *

The city fixed its price for the occupation of its streets and the operation of its cars thereon. The complainant companies are bound by the terms so fixed, and why should the city not be bound?"

Judge Finkelnburg said:

"Single detached provisions may indeed be noted from constitution and city charter which, taken by themselves, would seem to authorize the passage and enforcement of the ordinance here in controversy. But of course these instruments must be construed as a whole and effect given the other portions of them.

In brief, I find that under the constitution, laws and city charter applicable to this subject, the City of St. Louis had a right to enter into contracts with reference to the construction and operation of these street railways—that it did enter into such contracts and fixed the terms—that a contract having been entered into its terms were not open to alteration thereafter by the city alone—that ordinance No. 21087 is an attempted violation of the terms of said contracts—that therefore its enforcement ought to be enjoined.

Counsel for defendant in their brief (p. 61) admit that, 'if the city had attempted by ordinance to increase the special amounts of fixed sums or on gross receipts that the various companies had contracted to pay in the ordinance conferring these franchises' then the ruling in Detroit v. Railway,

184 U. S. 368, would apply because they say, 'on that point there was a contract;' but they contend that in the case at bar no such attempt was made; that the city simply amended its license tax on street cars, and that as to this there never was any contract. I cannot agree with this view of the situation. We must look at the substance, not names. The so-called amended license tax is an exaction of two per cent on the gross earnings of the complainants' railways in addition to what was specially agreed upon as a consideration for the right to construct and operate these railways. The substance and true meaning of such a provision cannot be changed by calling it by another name. As a contract is obligatory on the citizen so it must be binding on the public authority. * * *

As to the power of the Municipal Assembly to deprive itself of the further right to enforce taxes by contract, the distinction between general taxes and so-called license taxes must be borne in mind. The latter are not within the usual constitutional prohibitions against exemptions, etc. The Municipal Assembly may license or not license a particular occupation or business, or it may exact a license tax for a number of years and exhaust its power to exact any more, as I think it has done in this instance. The contention that the prior ordinances under which these railways were constructed confer rights-of-way only, but not the right to use them, or, as defendant's counsel put it, a right 'to be' but not 'to do,' strikes me as an unreasonably narrow construction of those prior ordinances. The granting part of these ordinances all contain the words: 'To construct, maintain and operate,' or words equivalent thereto."

The city insists that the license tax which is sought to be imposed by the ordinance which is questioned, gives to the appellees some right which it did not possess under the special ordinances granting them and their

predecessors the right to lay down and operate street railway tracks, and that this additional right is to run cars over the tracks when laid in the streets, and that for this additional privilege it has the right to impose a business or occupation tax. An occupation tax implies a concession of a right to do something which but for the payment of the tax, would be illegal—the conference of a new right, in consideration of the payment of the tax. If, therefore, the appellees under the several special ordinances, had the right to operate cars under the prior ordinances then the new imposition has no foundation as a consideration for the imposition of the added occupation tax. We have a substantial sample of all the ordinances in the one granting to the Lindell Railway Company the right to lay its tracks and operate cars. The first section grants permission and authority to the Lindell Railway Company to "construct, maintain and operate railroad tracks." The word "operate" here used, clearly implies the movement of cars over the tracks thus to be constructed.

Section 4 fixes the rate of speed at which cars may be run, clearly showing that the intention of the grant was to allow the grantee to operate cars over the tracks when laid down; and again fixes the fares to be charged.

This ordinance throughout refers in express terms or by necessary implication to the operation of cars over the tracks thus to be laid down. Section 4 requires cars to be operated at specified times and every day in the year at these specified times. The second paragraph of Section 6 fixes the compensation to be paid, which is upon an increasing ratio, until 1942, when it is required to pay a sum equal to four per cent of the gross earnings of the company for the preceding year, and adds which several sums "Lindell Railway Company, its successors and assigns, in consideration of the

rights and privileges granted by this ordinance, hereby agrees to pay the City of St. Louis, at the times they shall respectively become due and payable, as herein provided." The term of this grant extends to the 31st day of December, 1942. Thus we have in this ordinance every essential requisite of an occupation tax, the right to run cars for a fixed period for a sum stipulated to be paid. If this ordinance is valid, the appellees get no compensation for the additional occupation tax which the city seeks to impose by the ordinance they are resisting. Thus the solution of the question depends upon the terms of the contract in each instance made between the city and the respective company at the time it was entered into.

We are cited to the case of the City of Springfield v. Smith, 138 Mo., as an authority in impeachment of the views here expressed. In that case there was no special grant of a right to operate cars. There was a provision in that ordinance requiring the railway company to keep the street between their tracks and for two feet outside of the rail thereof in the same condition as the remainder of the street was kept by the city.

But this is a very natural obligation to impose in connection with the right to lay down and maintain the tracks in the streets of the city but had no sort of relation as compensation to the right of operating cars.

This is a summary of the whole matter.

Under the charter provisions cited, the city had undoubted power to contract with reference to the construction and operation of street railroads within its limits. It could prescribe the amount to be paid for the license, privilege or consent granted by it. It could fix the amount to be paid irrevocably and as a matter of contract.

The power to license is not like the power to tax. Certain property is exempted from taxation by the

Constitution. Certain other property may, under the Constitution, be exempted by general law. Beyond this, all property must be taxed and all attempted exemptions are void. But this has no reference to license taxes so-called which are not within the Constitutional provisions against exemptions.

Under the Constitution and the charter, Art. III, Sec. 26, Par. 5, the City **may** license, tax and regulate all callings and certain articles of property, but it need not do so. It may leave all or any of these callings or articles of property free of license tax.

When, therefore, the city came to deal with the Lindell Railway Company so far as concerns the matter here under consideration, it was under no compulsion but was free to contract and to make, once for all, such terms as it saw proper and as would be agreed to on the other side.

It could give its consent unalterably so far as concerned the license or privilege tax to be paid for the whole period of the franchise. The question then remains, did it make such a contract? The parties made a contract of some kind and they made a contract with reference to this matter. They used in the Lindell ordinance, and with reference to this very matter, language appropriate to a contract. They used such language respecting a matter not fixed by a permanent law, but within the discretion of the city. They agreed on a percentage of gross receipts to be paid for the license or privilege to construct and operate the railway.

If, now, the city, as soon as the railway is constructed, may compel and require additional percentage of the gross receipts without the consent of the company, and not in the exercise of a police power and not in the exercise of a compulsory taxing power; in other words, if it can increase the percentage of gross receipts to be

paid, not because it is compelled to do so, but just because it chooses to do so, then it never made any contract at all.

If, in spite of any provisions of the ordinance under which in pursuance of Article 10 of the Charter, it contracted with the Lindell Company (and this is what it now contends for), it may increase at pleasure the percentage of gross receipts which it may exact as the condition of the Lindell Company operating its cars, then it had no power to make such a contract at all, and Article X of the Charter is nugatory altogether. But the Charter is to be construed in its entirety, and effect given to every portion of it. The contract power exists and it was clearly exercised, and it is a contradiction in terms to say that the parties, at one and the same time, by the same ordinance and the same language, fixed the amount to be paid by the Lindell Company for the license and privilege of operating a street railway, and left that amount to be increased at pleasure by the city.

The city was bound, or it was left unbound. Both conditions do not and could not exist at the same time. There was an agreement or there was none. There was a license or there was none, and if there was an agreement, then the rights of the parties respecting its subject matter are determinable by the agreement.

The agreement fixes what the company was to pay for the privilege of operating its cars. To add to the sum so agreed to be paid for that privilege is to destroy the agreement.

We respectfully submit that the interpretation of the trial court of these ordinances and the ordinance complained of should prevail.

HENRY S. PRIEST,
For Appellees.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 194.

THE CITY OF ST. LOUIS, APPELLANT,

vs.

THE ST. LOUIS AND SUBURBAN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 10, 1907.

(20,520.)

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1 The United States of America to The St. Louis and Suburban Railway Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein The City of St. Louis is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable G. A. Finkelnburg Judge of the Circuit Court of the United States for the Eastern District of Missouri, this 11th day of December, in the year of our Lord one thousand nine hundred and six.

G. A. FINKELNBURG,
United States District Judge for the Eastern District of Missouri.

1½ [Endorsed:] In Equity. No. 4987. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. St. Louis and Suburban Railway Company *vs.* The City of St. Louis. Citation. Filed Dec. 11, 1906. James R. Gray, Clerk.

Service of the within citation acknowledged this 11th day of Dec. 1906.

BOYLE & PRIEST,
Att'ys for Appellees.

2 In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Be it Remembered, That heretofore, to-wit: On the 23rd day of April A. D., 1904, there was filed in the Clerk's office of said Court a certain bill in equity and five exhibits and two ordinances, which said bill, exhibits, and ordinances are respectively in words and figures as follows, to-wit:

Petition.

The complainant, the St. Louis & Suburban Railway Company, brings this, its bill, against the above named defendant, and humbly complaining, states:

1. That the St. Louis & Suburban Railway Company is a corporation, created by and existing under the laws of the State of Missouri, having its principal office and place of business in the City of St. Louis in the State of Missouri in the Eastern Division of the Eastern Judicial District of said State.

2. That the City of St. Louis is a Municipal Corporation of
3 the State of Missouri, in the Eastern Division of the Eastern Judicial District of said State.

3. That the City of St. Louis is authorized by its charter, through its Municipal Assembly acting by ordinance, to determine all questions arising with reference to street railroads in the corporate limits of the city, which may involve the construction of such street railroads, granting the right-of-way or regulating and controlling them after their completion; and it has power also in like manner to sell the franchises or right-of-way for such street railroads to the highest bidder, or, as a consideration therefor, to impose a *per capita* tax on the passengers transported, or an annual tax on the gross receipts of such railroad on each car, and no street railway may be incorporated or built in the City of St. Louis, except according to the above stated conditions of the charter, and in such manner and to such extent as may be provided by ordinance; that the said St. Louis & Suburban Railway Company was incorporated to construct, maintain and operate, and is lawfully authorized and empowered to construct, maintain and operate street railways in the said City of St. Louis and also in the County of St. Louis, Missouri, adjacent to said City; and that it was authorized by ordinance of the City of St. Louis, Numbered 15,954, and other ordinances of said City hereinafter mentioned, to construct, maintain and operate street railways on Union Avenue and other streets in said City in said ordinance described and to acquire the rights, franchises, immunities, privileges, concessions and property of other street railway companies in the City of St. Louis and to operate the same. And pursuant to such authority, it has by construction and purchase, acquired a large system of street railways in the said City of St. Louis.

4. That among the lines of street railway in said City of St. Louis, owned and operated by the said St. Louis & Suburban Railway Company and street railway franchises which it was authorized to acquire and which it did acquire, are the lines and franchises originally granted by the City of St. Louis to the St. Louis, Central and Western Railway Company, by ordinance No. 15,547, approved March 28, 1890; that by said ordinance No. 15,547, said St. Louis, Central and Western Railway Company, its successors and assigns, was authorized to construct, maintain and operate its lines over the streets of the City of St. Louis therein mentioned for the period of forty-seven years, from the date of said ordinance, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition and as a consideration that it, the said Company, its successors and assigns, should for the rights and franchises received, pay to the Treasurer of the City of St. Louis, for account of said City, on the last day of December of each year, begin-

ning three years from the approval of said ordinance, for the term of five years, the sum of $1,000.00, and for the further period of five years, the sum of $2,000 per annum, and from that time until the expiration of the rights and franchises granted by said ordi-
4 nance, the sum of $4,000.00 per annum; and said ordinance No. 15,547 was duly accepted by said St. Louis, Central & Western Railway Company, for itself, its successors and assigns, and constitutes a contract between the said City and the said Company, its successors and assigns, which the said City has no right to alter, impair or abrogate.

That the said St. Louis & Suburban Railway Company was expressly authorized by ordinance No. 15,954, of the said City of St. Louis, approved February 6, 1891, to acquire the said rights, privileges and franchises granted to the said St. Louis, Central and Western Railway Company by said ordinance No. 15,547, but upon the express condition that said St. Louis & Suburban Railway Company should not be relieved "from any obligation in regard to the amount of money to be paid to the City of St. Louis, under the provisions of ordinance No. 15,547."

5. That among the lines of street railway in said City of St. Louis, owned and operated by the said St. Louis & Suburban Railway Company, are the lines acquired, constructed, maintained and operated under and by virtue of the said ordinance No. 15,954, of said City of St. Louis, approved, Feb. 6, 1891.

That by said ordinance No. 15,954, the said St. Louis & Suburban Railway Company was authorized to acquire, construct and maintain and operate, a double track passenger railroad, over streets, alleys and City blocks in the said City of St. Louis, therein mentioned, for the period of 45 years from the date of the approval of said ordinance, upon certain expressed conditions as to the mode of constructing and operating the same, and for the consideration that it should not charge for transportation of passengers in excess of the rates of fare in said ordinance prescribed, to-wit, five cents for
5 all persons over twelve years of age, and two and one-half cents for persons under twelve years of age, for a continuous passage one way, which said right to charge as aforesaid is indispensible to the existence of complainant, and upon the further condition and as a consideration for the grant of the rights and franchises given to it by said ordinance, and the right to charge for transportation, that it, the said St. Louis & Suburban Railway Company, its successors and assigns, should for the rights, privileges, right to charge for transportation and franchises granted by said ordinance, construct a depot building and waiting room to be located at the terminus of its tracks in Forest Park in said City of St. Louis, upon ground belonging to the City of St. Louis, in accordance with the following provisions and conditions, as set forth in said ordinance, to-wit:

"Said Railway Company, its successors and assigns, shall cause plans and specifications to be procured for said depot building and waiting room by a skilful architect or architects and to cost not less than $25,000, which said plans and specifications shall be submitted

to and shall be subject to the approval of the Board of Public Improvements, and when so approved, said Company, its successors or assigns, shall procure bids for the construction of said depot building or waiting room, from at least three responsible parties, which said bids shall be submitted by said company to said Board of Public Improvements, and said Board shall accept the lowest of said bids; but no bids shall be accepted by said Board unless the same shall amount to at least the sum of $25,000.00; and said company, its successors and assigns, shall thereupon cause said depot building and waiting room to be constructed at its own cost and expense, in accordance with said plans and specifications and according to
6 the terms of the contract so awarded by said Board of Public Improvements and the construction of said depot building and waiting room shall be under the supervision of said Board of Public Improvements. Said depot building when completed, shall become the property of the City of St. Louis, and be under the regulations of the Park Commissioner, subject, however, to the use of said Railway Company, as a passenger depot."

That said ordinance No. 15,954, was accepted by said St. Louis & Suburban Railway Company, and acted upon by it, and the lines of railway authorized by said last named ordinance and by said ordinance No. 15,547, have been constructed, maintained and operated upon the faith and credit of said ordinance, and the said two last named ordinances constitute a contract between the said City and the said Company, its successors and assigns, which the said City has no right, or authority to alter, impair or abrogate, or to lessen the revenues to complainant receivable by complainant thereunder; that all said revenues are inadequate to meet all its obligations, and to pay said one mill tax.

And the said lines of street railway have been maintained and operated continuously since the same were constructed by the said St. Louis & Suburban Railway Company, and all the conditions and requirements of the aforementioned ordinances, (except where the same have been changed by mutual consent) have been kept by the said St. Louis & Suburban Railway Company, and all the payments required by the said ordinances to be made, have been made as and when the same respectively became due.

6. That among the lines of street railway in said City of St. Louis owned and operated by the St. Louis & Suburban Railway Company,
7 are lines constructed, maintained and operated under and by virtue of the provisions of ordinance No. 19,350, of said City of St. Louis, approved, April 5, 1898.

By said ordinance of said City, No. 19,350, said St. Louis & Suburban Railway Company, was authorized to extend its lines and in conjunction with the St. Louis & Meramec River Railroad Company, to construct, maintain and operate the same, over the streets of the City of St. Louis, therein mentioned for a term ending February 6, 1936, upon certain express conditions as to the mode of constructing and operating the same and upon the condition and for the consideration, that it, the said St. Louis & Suburban Railway Company, in conjunction with said St. Louis & Meramec River Rail-

road Company, should, whenever any of the streets upon which the tracks of said St. Louis & Suburban Railway Company were authorized to be laid, should be repaired or re-constructed, said Company, upon being notified by the street commissioner so to do, cause the space between the rails and tracks, and 12 inches outside thereof, to be repaired and reconstructed with the same material or better, with which the remainder of the street is repaired or reconstructed, to the satisfaction of the Street Commissioner.

And upon the further condition and as a consideration for the rights and franchises granted to them by said ordinance, that they, the St. Louis & Suburban Railway Company and the St. Louis & Meramec River Railroad Company, should each year until the expiration of the rights and privileges granted by the said ordinance, pay to the Treasurer of the City of St. Louis, for account of said City, the sum of $3,500.00 per annum, on the 31st day of December, of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

And the said last named ordinance was accepted by said St. Louis & Suburban Railway Company and the St. Louis & Meramec
8 River Railroad Company, and constitutes a contract between said City and the said Company, its successors and assigns, which the said City has no right or authority to alter, impair or abrogate.

And the said lines of street railway authorized by said ordinance were at once constructed by the St. Louis & Suburban Railway Company and the St. Louis & Meramec River Railroad Company and have been maintained, and operated continuously since the same were so constructed, and all the conditions of the aforementioned ordinance have been kept by the said companies and all payments required by the said ordinance to be made by them, have been made as the same respectively became due.

7. That among the lines of street railway in said City owned and operated by the said St. Louis & Suburban Railway Company are the lines constructed, maintained and operated by the authority and under the provisions of ordinance No. 19,393, of the City of St. Louis, approved June 10, 1898; that by said ordinance 19,393, said St. Louis & Suburban Railway Company, was authorized to extend its lines and to maintain and operate the same over the streets of the City of St. Louis therein mentioned for a term expiring February 6, 1936, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition, and for the consideration that the fare from any point or station on the extension of said railway authorized by said ordinance, to any point on the line of said extension, or to any point on its main or branch lines operated under the authority given by ordinance No. 15,954, or to any point on the St. Louis & Meramec River Railroad Company's line of railroad within the City limits, or from any point on said main line and branches operated
9 under said ordinance No. 15,954, or from any point on said St. Louis & Meramec River Railroad Company's lines within the City limits, to any point on said extension, should not exceed

two and one-half cents for persons under twelve years of age, and should not exceed five cents for persons over twelve years of age, for a continuous passage one way, which said power in complainant to charge for transportation was and is the essence of the contract between complainant and defendant.

And the said St. Louis & Suburban Railway Company was further required by the terms of said ordinance to issue to passengers who have paid regular fare and who may request the same, the necessary transfer ticket or tickets, entitling such passenger to immediate continued passage from the point where the transfer is made, over said extension line and over said main line and its branches as the case may be.

And upon the further condition and as a consideration for the grant of the rights, privileges and franchises given by said ordinance, that it, the said Company, should keep the tracks between the rails and between the tracks and to the extent of 12 inches outside of each rail, in perfect repair as nearly on a level with said rails as practicable, and that the portion outside the rails and between the tracks should be of the same material, as the street over which it ran or crossed and between the rails of the same or better material to the satisfaction of the Street Commissioner. And that said space should be repaved and reconstructed by said St. Louis & Suburban Railway Company as often and whenever the City of St. Louis should by an ordinance direct the repairing or reconstruction of said streets, and that all curves, switches and railway crossings, spaces between the rails and one foot outside of the rails should be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

And upon the further condition and in consideration of the rights and franchises granted by said ordinance, that it, said St. Louis & Suburban Railway Company, its successors or assigns should beginning two years from the approval of said ordinance, pay to the Treasurer of the City of St. Louis, for account of said City, on the last day of December of each year, for a term of 5 years, the sum of $1,000 and from that time up to the year 1920, the sum of $2,000 per annum, and thereafter until the expiration of the rights and franchises granted by said ordinance, the sum of $4,000.00 per annum.

And it was further provided by said ordinance that any failure on the part of said St. Louis & Suburban Railway Company, its successors or assigns, to comply with the conditions and requirements of said ordinance, should work a forfeiture of all rights granted by the same, and should constitute a breach of the bond which by the terms of said ordinance, said St. Louis & Suburban Railway Company was required to give.

And it was further provided by section 8 of said ordinance No. 19,393, that all of the provisions of said ordinance No. 15,954, so far as the same were in force, should apply to the entire line of Railway of said St. Louis & Suburban Railway Company, including the extension, provided for in said ordinance No. 19,393, except so

far as the same might be modified by or be inconsistent with the provisions of said last mentioned ordinance.

And it was mutually agreed by and between the St. Louis & Suburban Railway Company and the said City of St. Louis,
11 by the terms of section 7 of said last named ordinance, that the said St. Louis & Suburban Railway Company should relinquish and surrender to said City, in part consideration of the rights, privileges and authority granted by said last named ordinance, the authority, license and permission given it by section 1, of ordinance No. 19,954, to construct and operate double tracks across the Wabash Railroad Company's tracks on Union Avenue, to a point 300 feet within Forest Park and that the southern terminus of its said tracks should be at a point on said Union Avenue in the northern line of the right-of-way of said Wabash Railroad. And that the acceptance of said ordinance No. 19,393, should be sufficient evidence of said relinquishment and release. And that said Railway Company should remove its tracks from the southern Terminus established by said last named ordinance to its then established southern terminus in Forest Park, within 90 days from the approval of said last named ordinance, and should restore the street to its former condition.

It was mutually agreed by the provisions of said section 7 of said ordinance No. 19,393, that section 9 of said ordinance No. 15,954, should be and was thereby repealed; such repeal not to take effect until the acceptance by said St. Louis & Suburban Railway Company of said ordinance No. 19,393, as provided by section 4 thereof.

And it was further mutually agreed by the provisions of said section 7, that in consideration of the repeal of said section 9 of ordinance No. 15,954, and in lieu of the requirements thereof, the said Railway Company should be required and it thereby agreed to cause to be graded, the alleys along its right-of-way, west of Vanderventer Avenue, and to build suitable retaining Walls, if necessary, for such alleys, east of Sarah Street, said walls to be
12 located so as not to interfere with the right of said St. Louis & Suburban Railway Company to occupy and use said alleys under the provisions of section 1, of ordinance No. 15,954; that said improvements were to be made according to plans and specifications, submitted to and approved by the Board of Public Improvements: Provided, however, that the said Railway Company should not be required to expend more than $25,000.00 for such improvements.

And it was further mutually agreed by the provisions of said section 7 that the said Railway Company should dedicate to public use and open and grade in lot 12, City block No. 3,754, an alley twenty feet wide, from Morgan Street to the alley which extends along the south side of said right-of-way.

And the said ordinance No. 19,393, was accepted by said St. Louis & Suburban Railway Company, and constitutes a contract between the said City and the said Company, which the said City has no right or authority to alter, impair or abrogate.

And the said lines of street railway authorized to be constructed by said last mentioned ordinance, were long ago constructed by said

St. Louis & Suburban Railway Company and have ever since been maintained and operated, continuously by said St. Louis & Suburban Railway Company, and all the conditions, and requirements of the aforementioned ordinance No. 19,393, have been kept by said St. Louis & Suburban Railway Company, and all the payments required by the said ordinance to be made by it, have been made as and when the same respectively became due, and the complainant hereto attaches and makes part of this bill, the said ordinances Nos. 15,547, 15,954, 19,350 and 19,393, marked respectively Exhibits "A," "B," "C" and "D."

8. This complainant shows that by the provisions of the
13 several ordinances in this bill of complaint hereinbefore mentioned and set forth, the said St. Louis & Suburban Railway Company is restricted in its charge for transporting passengers over its lines of railway in said City of St. Louis to five cents, for each passenger above the age of 12 years, and to 2½ cents for passengers under 12 years of age.

9. And this complainant shows that by the provisions of said ordinance No. 19,393, it is required to operate the street railways in the City of St. Louis, owned and operated by it, substantially as one system, and it is provided in and by said ordinance, that transfers shall be given so as to transport passengers by a continuous trip from any point on the system to any other point on the system and such transfers are so given by complainant free of any charge additional to the charge of five cents or of 2½ cents, originally paid by the passenger.

10. And this complainant shows to the Court that the several sums required by them to be paid under the provisions of the various ordinances hereinbefore set forth, the construction, re-construction, paving, repaving, repairing and maintaining the spaces in the streets used by them, required by them to be done as hereinbefore set forth, by the several ordinances aforesaid, the limitations imposed by said ordinances upon the rate of fare which may be charged by complainant for transfer and transportation over its said lines of street railway, and the requirement for the giving of passengers transfers, as set out above, were and are the considerations exacted, demanded and stipulated for by the said City of St. Louis from this complainant, and its predecessors in right and title, for the rights granted by the said City, to construct, maintain and operate the said lines of street railway, and no other right or
14 privilege or revenue of any kind, and no other thing of value of any kind whatsoever was given or granted to the complainant or its predecessors in right and title by the said City, in consideration of the aforesaid requirements made of them; that to carry out said contract on its part the right in complainant to retain and use all its revenues is essential.

And the said ordinances constitute contracts and agreements between the said complain-t and the said City of St. Louis giving right, license and authority to the said St. Louis & Suburban Railway Company to maintain its said lines of street railway and operate cars over the same for the transportation of passengers, which said

contracts are irrevocable except by the agreement of the parties thereto, for the terms thereof.

11. And this complainant shows that the City of St. Louis had authority under its charter and laws and the constitution of the State to provide by contract through the form of ordinances enacted in that behalf for the construction, maintainance and operation of street railways, over the streets of the said City, and to prescribe the conditions thereof, and the considerations therefor; and that by the ordinances hereinbefore mentioned, the said City of St. Louis did contract with the said St. Louis, Central and Western Railway Company, its successors and assigns, and the said St. Louis & Suburban Railway Company, for the construction, maintenance and operation of the said several lines of railway, and did by said ordinances, prescribe the considerations to be paid therefor, which considerations have in all cases been paid.

12. And the complainant shows that the said City of St. Louis, the premises notwithstanding, by ordinance No. 21,087, herewith filed and made a part hereof marked "Exhibit E," approved March 25, 1903, assumed and enacted and provided that all persons,
15 co-partnerships, associations and companies, engaged in the business of transporting passengers from one point to another within the said City of St. Louis, for hire, on street railways, should pay the license collector of the said City of St. Louis, an alleged license for each and every car used by them in transporting passengers, which so called license was to be payable on the 16th days of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last days of the preceding March, June, September and December; the amount of such alleged license on each such car to be determined at a sum equal to one mill for each revenue or pay passenger, carried on such car, during the said preceding three months, ending as aforesaid. And that the said so called license so assuming to be authorized and imposed by the said ordinance No. 21,087, imposes a charge upon the gross receipts from the carriage of passengers exceeding 2 per cent. of the same, and no rights, privileges, franchises or considerations of any kind whatsoever are granted by said ordinance in consideration of the charge so assumed to be imposed and no rights, privileges, franchises, or properties of any kind whatsoever are granted by the said ordinance, or may be acquired or held under the same, other than those already possessed by the complainant, under previous ordinances of and contracts with the said City.

And it is provided in the said ordinance No. 21,087, that every corporation, company, or association, required thereby to pay a street car license, shall provide for and equip each car used in the transportation of passengers, with a suitable register or indicator, capable of registering passengers to a number not less than 9,999, and upon which shall be rigistered in continuous numerical succession the number of passengers who have paid for transportation on said car.

16 And it is further provided that each of said corporations, companies, or associations shall make report of the number

of passengers carried by it, on each car daily, for the previous day, to the Register of the City of St. Louis, showing the number of paying or revenue passengers carried by it.

And it is provided by said ordinance, that every person, corporation, company or association, refusing or neglecting to make the report so provided for shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than $5.00 nor more than $500.00.

And it is provided by said ordinance that any person, company, corporation, or association which it is assumed is required to pay such street car change or license, and which shall fail or neglect to pay the same within ten days after notice from the license collector, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than $100.00 nor more than $500.00, and each day of such failure, neglect or refusal, shall constitute a separate offense.

And it is provided in said ordinance, that a failure, refusal or neglect to pay such so-called license for thirty days, after the same is by the terms of said ordinance payable, shall operate as a revocation of any existing or subsequent license, which said parties may have obtained to operate such street cars in said City.

And it is provided in said ordinance that nothing therein contained, shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein, from the payment of any sum agreed, assumed or required to be paid, by the terms of any special ordinance or agreement or contract,
nor as replacing or affecting the same in any way, nor shall
17 said ordinance be construed as impairing or affecting any license theretofore obtained.

13. And notwithstanding the premises, the said City of St. Louis is now demanding under pretense of authority of the said last named ordinance, of the complainant herein, that it shall pay to the said City of St. Louis on all revenue or pay passengers carried by it, the said sum of one mill for each revenue or pay passengers so carried over the lines of said railway owned by the said St. Louis & Suburban Railway Company, in the said City of St. Louis, which charge of one mill aforesaid impairs the contract herein set forth, made with complainant as herein stated and subtracts from the power of complainant to meet its obligations to defendant and the public under this contract.

13*a*. And this complainant shows that it is provided by the Constitution of the State of Missouri, which was adopted in the year A. D. 1875, in Article X, thereof among other things as follows, viz.:

"SECTION 1. Taxing Power, How Exercised.—The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

"SECTION 3. Taxing for Public Purposes Must be Uniform.—Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the terri-

torial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

18 "SECTION 4. Taxes in Proportion to Value.—All property subject to taxation shall be taxed in proportion to its value.

"SECTION 5. Railway Corporations, Taxed for What Purposes.—All railroad corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes, on the real and personal property, owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock.

"SECTION 10. General Assembly Shall Not Tax Municipalities, When.—The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

"SECTION 11. Rates For Local Purposes—Limits—How Increased for Schools and Erection Public Buildings.—Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars, and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For city and town purposes the annual rate

19 on property in cities and towns having thirty thousand inhabitants or more shall not, in the aggregate, exceed one hundred cents on the hundred dollars valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; and in towns having one thousand inhabitants or less, said rate shall not exceed twenty-five cents on the hundred dollars valuation. For school purposes in districts, the annual rate on property shall not exceed forty cents on the hundred dollars valuation: Provided, The aforesaid annual rates for school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are tax payers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation

herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city, or school district, voting at such election, shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for state and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census taken under the authority of the State, or of the United States; said restrictions as to rates shall apply to taxes of every
20 kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

13*b*. And it was provided by general law of the State of Missouri, in pursuance of the constitutional provisions hereinbefore set forth, as shown in Article VIII, of Chapter 149, of the Revised Statutes of Missouri for the year 1899, that railroad companies were to be assessed by the State Board of Equalization of the State of Missouri for all purposes of taxation, state, county and other municipal or local purposes, and that the taxes levied thereon should be levied in the manner by said law provided, to-wit, upon the cash value of all the property owned by such railroad company, return whereof was to be made to said Board of Equalization. And it was provided by the laws of the State of Missouri enacted in 1897, and found in sections 9353, 9354 and 9355 of the Revised Statutes of 1899, as follows:

"SECTION 9353. Street Car Companies to Make Statement.—On or before the first day of January in each year, the president or other chief officer of every street railroad company in every city of this state whose line is now or shall hereafter become so far completed and in operation as to run horse cars, electric cars, cable cars or cars propelled by any other device for the transportation of passengers, shall furnish to the state auditor a statement, duly subscribed and sworn to by said president or other chief officer, before some officer authorized to administer oaths, setting out in detail the full length of the line, so far as completed, including branch or leased lines, the entire length in this State, the length of double or side tracks, the length of such line located upon real estate to which such company may have title as right of way, real estate, the length of such
21 line located upon the public streets or thoroughfares of any city, together with all cars, motors, grip cars, live-stock, electric trolley wires, cables, cable conduits, power houses, stables and all other property, real, personal or mixed, used or leased on the first day of June, which may be used in or incident to the operation of such street railroad, the length of such line in each county, municipal township and city through or in which it is located, and the cash value of the several items embraced in the statement.

"SECTION 9354. Taxes to Be Levied.—The said property returned to the State auditor, as by section 9353 required, shall be subject to taxation for state, county, municipal and other purposes to the same extent as the real and personal property of private per-

sons, and the same shall be assessed, apportioned, certified and the taxes thereon levied and collected at the time and in the manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property.

"SECTION 9355. Purpose of Certain Sections.—It being the purposes of the two preceding sections to make the property of street railroads in cities assessable and taxable in the same manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property, all acts and parts of acts inconsistent or in conflict therewith, are hereby repealed."

13*c*. And it was provided by the laws of the State of Missouri, approved March, 1901, as follows:

"SECTION 1. The franchises (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and all other similar corporations owning, operating and managing public utilities, and of all quasi public corporations possessing special
22 and peculiar privileges and authorized by law to perform any public service (except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation.

"SECTION 2. The State board of equalization in cases of railroads, street railroads, bridges, telegraph, telephone companies and all other corporations whose property the state board of equalization is now or may hereafter be required to assess, and the county assessor in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporation, tangible and intangible, in this State, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessor's books, under the head of 'all other property.'"

13*d*. And it is provided by the laws of the State of Missouri, Section 9357, Revised Statutes A. D., 1899, that of the taxes levied upon the railroad and street railroad properties of the State and collected therefrom, each county, municipal township, city or incorporated town of the State shall receive its due share of the taxes levied and collected for municipal purposes, to-wit, the taxes levied
for municipal purposes upon the portion of the property
23 located within the municipality, with the due proportion of franchise value added; and the City of St. Louis had no right or authority to levy any taxes, public charges or burdens upon the property or business of this complainant, other than as provided by the general laws of the State of Missouri, hereinbefore referred to,

and the said City had no right to levy upon or demand or collect from this complainant any portion of its gross receipts, or to impose any *per capita* charge on the passengers transported by complainant, except as the same was done by the ordinances and contracts granting the rights to the complainant, or to its predecessors in right and title, to use the streets of the said City of St. Louis for street railroad purposes, and as a consideration for the grant of such rights.

14. And complainant shows that the said City of St. Louis pretends and claims that the said charge of one mill for each revenue or pay passenger assumed to be provided for and imposed by said ordinance Numbered 21,087 is required to be paid by complainant in addition to the several sums and taxes provided to be paid under the several ordinances granting to the St. Louis & Suburban Railway Company, and its predecessors in right and title, the right to construct, maintain and operate its lines of street railway in the said City of St. Louis.

15. And this complainant shows that the said ordinance No. 21,087, if by its terms it imposes such additional charge, is illegal, unconstitutional and void, because imposing a tax, charge or consideration for rights, privileges and franchises theretofore granted on the considerations aforesaid to and already possessed by the complainant.

And such ordinance is in violation of the provisions of the
24 Constitution of the United States, section 10, of Article 1 thereof, which provides that no State shall pass any law impairing the obligations of contracts; and is in violation of Article 14 of the Amendments to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which said ordinance does.

16. The complainant shows that said ordinance if it imposes a charge of one mill or any other sum upon each revenue passenger carried by the complainant over its lines of street railway in the said City of St. Louis, impairs the obligation of the contracts made by the several ordinances hereinbefore recited, and by imposing additional and heavy burdens and charges as a condition of using, enjoying or exercising the rights and franchises granted by said special ordinance and by assumed legislative enactment, deprives this complainant of its property without due process of law and withholds from it the equal protection of the law.

17. And this complainant shows that the said so called license charge assumed to be imposed by the said ordinance No. 21,087, is not a license fee, but is an additional unequal charge and compensation assumed to be and is arbitrarily exacted from this complainant as a consideration for rights and franchises already granted to it by contracts with the City of St. Louis, and paid for by complainant in accordance with the provisions of said contracts.

18. And this complainant shows that said St. Louis & Suburban Railway Company, purchased the franchises and properties and constructed the lines of railway hereinbefore mentioned, upon the faith

of the inviolability of the said contracts between the said com-
25 pany and its predecessors in right and title, and the said City of St. Louis, and the bonds and stocks in large amounts of the said St. Louis & Suburban Railway Company were negotiated and are now held by many persons, who acquired the same on said faith, and the value of the properties, rights, franchises and privileges of said company, and the fixed right of complainant to retain and use all its revenues and all its bonds and stocks, will be greatly impaired and depreciated, if said ordinance No. 21,087 is enforced, according to its terms as asserted by the said City of St. Louis, and complainant's right to retain and use all said revenues be denied.

19. And this complainant shows that the said City of St. Louis intends and threatens to and will unless prevented by the interposition of this Honorable Court, deny to complainant the equal protecting of the law and assert the said ordinance No. 21,087, against this complainant as imposing a present and existing charge upon it of one mill for every revenue passenger carried by it, and thereby cast a cloud upon the title of the properties of this complainant, greatly impairing its credit.

And the said ordinance, if enforced, according to its terms, will discriminate against complainant, and deprive this complainant of revenue amounting to many thousands of dollars per annum, which are absolutely required for the purposes of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it, and to the proper discharge of the obligations imposed upon it by the several special ordinances hereinbefore set forth, and its obligations to pay its debts.

And the said city intends and threatens and will unless prevented by the interposition of this Honorable Court, institute numerous vexatious proceedings to compel/ plaintiff to comply with the
26 provisions of said ordinance No. 21,087, in the form of suits to recover the penalties prescribed by said ordinance and by suits to forfeit other franchises, rights and privileges acquired and held under the provisions of the several special ordinances hereinbefore set forth, and as a result, complainant will be subjected to great loss, damage, hinderance and annoyance in the conduct of its business, which it is entitled to carry on without such proceeding, suit, annoyance, hinderance loss and damage, and will be greatly impaired in its ability to properly conduct the services assumed by it, and imposed upon it by the several special ordinances above mentioned.

All of which actings and doings and threatened actings and doings of the said City of St. Louis are contrary to equity and good conscience, and will inflict irreparable damage upon complainant, and inasmuch as complainant is without remedy, except in a Court of Equity, and to the end that the complainant may have the relief to which it is entitled, and that the said defendant may answer the premises but not upon oath or affirmation, answer upon oath or affirmation being hereby expressly waived by complainant, may it please Your Honors to grant unto complainant a writ of subpœna to be directed to the City of St. Louis, commanding it at a certain

time and under a certain penalty to be therein named, to be and appear before this Honorable Court, then and there full, true, direct and perfect answer to make to all and singular the premises; and complainant prays that the said City of St. Louis may be perpetually restrained and enjoined from in any wise asserting or seeking to enforce said ordinance No. 21,087 against this complainant, and that said ordinance be declared to be null and void.

And complainant prays that a temporary restraining order issue out of and under the seal of this Honorable Court against
27 the said City of St. Louis, its officers, agents and attorneys, enjoining them, and each of them, from in any wise, by suit or otherwise, asserting or enforcing said ordinance No. 21,087, against the complainant, until the further order by this Court; and that upon the final hearing hereof, the said injunction to be made perpetual.

And complainant prays for such other and further relief as it may be entitled unto and as to the Court may seem *to* meet and proper.

JEFFERSON CHANDLER,
Solicitor for Complainant.

STATE OF MISSOURI, *City of St. Louis, ss:*

Julius S. Walsh, Jr., being first duly sworn on oath, deposeth and says, that he is the vice-president of the complainant company, the St. Louis & Suburban Railway Company; that he has read the foregoing bill of complaint of the said company, and knows the contents thereof, and that the matters and things therein set forth, are true as he verily believes.

JULIUS S. WALSH, JR.

Subscribed and sworn to before me this 18th day of January, 1904, by the said Julius S. Walsh, Jr.

My commission expires April 23d, 1907.

EDWIN W. MILLS,
Notary Public, City of St. Louis, Mo.

EXHIBIT "A."

[15,547.]

An ordinance authorizing the St. Louis Central and Western Railway Company to construct, operate and maintain a double
28 track passenger railway on, along and across certain streets, alleys and city blocks in the City of St. Louis.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto George L. Peabody, Henry E. Warner, George W. Parker, Joseph C. George, George A. Baker, Edward R. Feuerborn, Walter J. Blakely, H. C. Buhoup and Henry L. Edmunds, when in-

corporated under the laws of the State of Missouri, and in the name of the St. Louis Central and Western Railway Company, and unto said company, its successors and assigns, to lay down, construct, or acquire and to operate and maintain a double track passenger railroad, on, over and along the route prescribed in section 2 of this ordinance, and over and across all streets and alleys, city blocks and other places crossed or intersected by said route, together with all necessary curves, switches and sidings.

SEC. 2. The railroad authorized by section 1 of this ordinance shall begin on Locust street, at its intersection with Sixth street, and run thence west with double track on Locust street on the present tracks or roadbed of the St. Louis Cable and Western Railway Company to Thirteenth street, thence north on Thirteenth street to Lucas avenue, thence west on Lucas avenue to Fourteenth street, thence north on Fourteenth street to Wash street, thence west on Wash street to its intersection with Easton avenue, thence over and across Easton avenue into Franklin avenue at its junction with Leffingwell avenue, thence west on Franklin avenue to a point about one hundred and fifty feet east of Grand avenue, thence curving through city block 1,063 and across Grand avenue into Morgan street on
29 the west side of Grand avenue, thence west on Morgan street to the present terminus of the cable division of the St. Louis Cable and Western Railway Company, thence curving northwestwardly through city block 3,754 to the alley on the south side of the roadbed of the narrow gauge division of the St. Louis Cable and Western Railway Company; thence westwardly through said alley and over and across all intervening streets, highways and private property in a line with said alley to Taylor avenue; thence over and across Taylor avenue into city block number 3,761, and thence by the most practicable route into Richmond place, at a point about three hundred feet west of Taylor avenue; thence westwardly on Richmond place to Walton avenue; thence over and across Walton avenue through city block number 3,762, over and across Bayard avenue, through city block number 3,763, over and across Lay avenue, through city block number 3764, over and across Aubert avenue, through city block number 3,765, over and across Kingshighway into Morgan street on the west side of Kingshighway, thence westwardly on Morgan street to Union avenue, and thence south on Union avenue to the railroad track of the Wabash Western Railway Company, which is at or near the north line of Forest Park; and if said grantee, its successors or assigns, shall at any time succeed in obtaining the right of way over the private lands west of Union avenue and adjacent to Forest Park, its tracks may be deflected by easy curving out of Union avenue and into such lands, and *that in* event its tracks and railroad may be projected, extended, constructed and operated over the track or tracks of the Wabash Western Railway Company and over all intersecting streets and alleys on an elevated structure, into Forest Park at a point west of the superintendent's house and north of the most northerly driveway, so that no roadway in the park will be crossed or obstructed by them;
30 such terminal point to be determined by the Board of Public Improvements, the elevations of such elevated structure over

all intersected streets and alleys, if any, and the plan by which the deflection from Union avenue and into the parks is to be made, as well as the point of deflection to be submitted to and approved by the Board of Public Improvements before the work is done, and when approved by the Board of Public Improvements, the work shall be done in strict compliance with the plan so approved; provided further, that the St. Louis Central and Western Railway Company, its successors and assigns, may maintain the wheel in Sixth street, on which the cable of the railroad now in Locust street runs, where it is now placed; but the most eastern switch shall be taken up and thrown far enough west to enable cars to be switched thereon from one track to another without projecting beyond, or east of the west building line of Sixth street, and said railway company agree that under no circumstances shall its cars at any time project east of the building line on the west side of said Sixth street.

SEC. 3. The power to be used in the propulsion of the cars of said St. Louis Central and Western Railway Company, its successors and assigns, shall be cable underground or electricity. The electricity, if adopted, to be carried either by storage battery or by conduit under ground or at the election of the company, through overhead wires by the overhead wire system, on ornamental iron poles, or such other as may be permitted by the Board of Public Improvements. The poles to be placed either at the curb-stone along the route, on either side, or between the tracks of the railway company, as may be determined by the Board of Public Improvements, either for the whole line or for parts thereof, as may in the judgment of the Board be most desirable in the interest of the public; but until authorized by future legislation electricity shall not be used on that part
31 of *of* the line of said railroad east of 22nd street. For the purpose of changing from grip to motor cars, and vice versa, at this point, said company its successors and assigns, are authorized to lay down, construct and operate and maintain all necessary and convenient switches in the intersecting street at its power house, both north and south of the main line, not, however, to exceed one hundred and fifty feet in length either way. In case of emergency, horses may be used for motive power.

SEC. 4. If in the construction of this railroad under the authority of this ordinance, any water pipe or sewer is interfered with, so as to require the same to be relaid or repaired, all such work shall be done by the proper city department, and the total cost or expense thereof shall be paid by said railway company, its successors or assigns. If any public water pipe or sewer along which said railroad so to be constructed and operated shall, in consequence thereof, at any time be injured or damaged by reason of the construction of said railway thereon, make the repairing or reconstruction of such water pipe or sewer necessary in the opinion of the proper authority of the City of St. Louis, said railway company, its successors or assigns, shall make such repairs at its own cost and expense, and in order to insure a faithful compliance with the provisions of this ordinance relative to the repairing of streets, tracks, water and sewer pipes, the said railway company, its successors or assigns, shall

pay into the City Treasury the sum of five hundred dollars within thirty days after the acceptance of this ordinance, as a special fund for the purpose of defraying the cost of such repairs as the said railway company, its successors or assigns, may be liable to make, or which, in the opinion of the Street Commissioner, shall be necessary to be made. Whenever there shall be any deficit in the de-
32 posit above mentioned, in consequence of the part or whole of said deposit having been used for repairs by the Street Commissioner, the President of the Board of Public Improvements shall notify said company in writing, its successors or assigns, that such deficiency exists, and a failure to make such deficiency good by said railway company, its successors or assigns, within ten days after said notice shall have been given, shall be deemed a misdemeanor, and upon conviction thereof before any Police Justice of the City of St. Louis said company shall be fined not more than twenty-five dollars for each day such deficiency shall continue.

SEC. 5. Said railroad and its appurtenances shall be maintained in good order by said company, and said railroad, between Sixth and Locust streets and Forest Park, shall be operated between the hours of five o'clock a. m. and twelve o'clock midnight, and the cars shall be run thereon between the hours of five o'clock a. m. and nine o'clock a. m. at intervals not greater than five minutes, and between nine o'clock a. m. and five o'clock p. m. at intervals not greater than seven minutes, and between five o'clock p. m. and seven o'clock p. m. at intervals not greater than five minutes, and between seven o'clock p. m. and twelve o'clock midnight at intervals not greater than seven minutes. Any failure on the part of said company, its successors or assigns, to operate its road and run its cars as herein provided, shall be deemed a misdemeanor, and upon conviction thereof said company shall be fined for each offense, not more than one hundred dollars, and said company shall not run its cars at a greater rate of speed than eight miles an hour between Sixth street and Channing avenue, nor greater than fifteen miles per hour between Channing avenue and its western terminus at Forest Park, and shall not charge for a single continuous passage one way, over its said line between its terminus at Sixth and Locust streets and its
33 terminus at Forest Park, more than the rate authorized by this ordinance, which shall be five cents for each ride one way for an adult, or every person over the age of twelve years, and two and a half cents for a child under twelve years of age. Tickets for the use of children under twelve years of age shall be sold in lots of not less than ten for twenty-five cents.

SEC. 6. Within sixty days after this ordinance shall become a law, said company shall file with the City Register its written acceptance of the provisions hereof and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties to be approved by the Mayor and Council, conditioned that said company shall observe all the terms and conditions of this ordinance, and shall hold the City of St. Louis harmless from the payment of all damages and costs by reason of the construction, operation or maintenance of said railroad, which bond shall be renewed from

time to time whenever demanded by the Mayor, and whenever a new bond shall be demanded and given and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be cancelled and returned to the makers and the new bond filed with the Register of the city. Within six months from the date of such acceptance said St. Louis Central and Western Railway Company, its successors and assigns, shall in good faith begin the construction of said line of railroad, and within two years from the date of such acceptance, shall have its cars in operation from its terminus at Sixth and Locust streets to the terminus at Forest Park, and the terms of this franchise shall then exist in favor of said railway company, its successors or assigns, for a period of forty-five years. And unless said company shall commence and complete its road to its western terminus at or near Forest Park, as herein provided, in the manner and at the time by this ordinance
34 provided the rights and privileges hereby granted by this ordinance shall cease and become void.

SEC. 7. Before constructing the railroad provided for, or any part thereof, the said railway company, its successors or assigns, shall file in the office of the Board of Public Improvements of the City of St. Louis, an accurate plan of the location of its tracks and a profile of the same, and should the Board of Public Improvements direct any change in the plan and profile, not inconsistent with the general provisions of this ordinance, such change or changes shall be made by said company, its successors or assigns, and after said plans and profiles have been agreed upon, the work of construction shall be begun.

The laying of tracks along or across streets and alleys shall be done so as not to unnecessarily interrupt or interfere with travel thereon, and shall be done under the direction and to the satisfaction of the Board of Public Improvements. The said railway company shall keep the streets between the rails and between the tracks, and to the extent of twelve inches outside of each rail, in perfect repair as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street itself, and between the rails of the same or better material, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the repairing or reconstruction of said street; and provided further, that at all curves, switches and railway crossings, the space between the tracks and between the rails and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner. Said railway company shall construct its tracks with flat steel rails of pattern described and provided by general ordinance of the City of St. Louis.

35 SEC. 8. In consideration of the rights and franchises granted by this ordinance, said St. Louis Central and Western Railway Company, its successors or assigns, shall, beginning three years from the approval of this ordinance, pay to the Treasurer of the City of St. Louis, for account of the city, on the last day of

December of each year, for the term of five years, the sum of one thousand dollars, and for the further period of five years the sum of two thousand dollars per annum, and from that time until the expiration of the rights and franchises granted by this ordinance, the sum of four thousand dollars per annum.

SEC. 9. If at any time the St. Louis Central and Western Railway Company its successors and assigns, shall acquire the right of way, roadbed, tracks and franchises of the St. Louis Cable and Western Railway, or any part thereof, then and in that event, such right or rights of way, railroad and franchises so acquired may be operated in connection with the railroad authorized by this ordinance, and may be maintained and operated by said St. Louis Central & Western Railway Company, its successors and assigns, free from the penalties, burdens and obligations imposed thereon by ordinances of the City of St. Louis, numbered twelve thousand eight hundred and fifty-two and thirteen thousand two hundred and eighty-two; and said St. Louis Central and Western Railway Company, its successors and assigns, may lay down and maintain all necessary connections by switches and otherwise between said railroad and right of way so to be acquired, and the railroad authorized by this ordinance.

Approved March 28, 1890.

EXHIBIT "B."

[19,954.]

36 An ordinance authorizing the St. Louis and Suburban Railway Company to acquire, construct, operate and maintain a double track passenger railroad on, along and across certain streets, alleys and city blocks, in the City of St. Louis, and to operate its line of railroad by cable or electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto the St. Louis and Suburban Railway Company, its successors and assigns, to acquire all the rights, franchises, immunities, privileges and concessions heretofore granted unto the St. Louis Central and Western Railway Company, its successors and assigns, by Ordinance Number 15,547, of the City of St. Louis, approved March 28th, 1890, except as by this ordinance is otherwise specially provided and excepted and when said St. Louis and Suburban Railway Company shall have acquired the same, it may acquire or construct, and may operate and maintain a double track passenger railroad on, over and along any part or parts thereof, and for the purpose of conveniently connecting the different portions of the tracks which it is authorized by this ordinance to operate, it may in addition, construct, operate and maintain a double track passenger railroad from a point at or near the present terminus of the cable tracks on Morgan street, by the most feasible route over Morgan street, into City Block Number 3754 of the City of St.

Louis, to a point on the roadbed or right of way of the steam division of what was formerly the St. Louis Cable and Western Railway Company's railroad, now owned by the St. Louis and Suburban Railway Company, distant not more than six hundred and twenty feet west of the west line of Vandeventer avenue; and may also construct, maintain and operate a double track passenger railroad on Union avenue from the point where the said steam division
37 intersects Union avenue southwardly, on, over and along said Union avenue to a point three hundred feet inside of Forest Park to a point to be selected by the Board of Public Improvements, and may also construct, maintain and operate a double track passenger railroad from the intersection of said Union and Finney avenues, eastwardly on said Finney avenue to the aforesaid roadbed or right of way of said steam division where the same now crosses said Finney Ave.; and the said St. Louis and Suburban Railway Company, its successors and assigns, may also construct, maintain and operate a double track passenger railroad over the whole of the route now occupied by any of the tracks of what was formerly known as the St. Louis Cable and Western Railway Company excepting the spur track to the old depot site near Olive street herein mentioned, and now owned and operated by the St. Louis and Suburban Railway Company; and it may occupy and use with its tracks, roadbed and appurtenances, from its present depot near Vandeventer avenue to the west line of Taylor avenue, in any alley or street now or hereafter established, for public use, three feet contiguous to the north line and seven feet contiguous to the south line of the present roadbed or right of way of the present steam division of said railroad, which is now owned and operated by said St. Louis and Suburban Railway Company; and said St. Louis and Suburban Railway Company may also occupy and use with its tracks, roadbed and appurtenances, between the west line of Taylor avenue and a point where the present line of said railway crosses the City limits in a northwesterly direction, in any alley or street now or hereafter established, five feet contiguous to and on each side of the present roadbed or right of way of said steam division now owned and operated by the St. Louis and Suburban Railway Company, and the use and occupation above described shall be in lieu of the
38 route authorized by Ordinance Number 15,547, in Richmond place, near Taylor avenue, westwardly through Richmond place, and intersecting and crossing the streets and city blocks to King's Highway; thence through Morgan street, to Union avenue, also in lieu of the use of the entire alley on the south side of said roadbed or right of way, as included in the route granted in the foresaid Ordinance Number 15,547; and the said St. Louis and Suburban Railway Company may also construct, maintain and operate all curves, switches, sidings and connections, and may make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its tracks along the route which is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the present gauge of the cable division of said railway, or the

gauge established by general ordinance for street railroads in the City of St. Louis; but nothing contained in this ordinance shall be so construed as to give any right to said St. Louis and Suburban Railway Company to operate or change the gauge of the spur track now running from the present depot on Morgan street near Vandeventer avenue to the old depot site near Olive street and Cabanne avenue, it being the intention, as soon as possible, to discontinue the existence of said spur track and the running of trains thereon.

SEC. 2. Said St. Louis and Suburban Railway Company, its successors and assigns, may operate its railroad along the route authorized herein by cable laid under ground, or by electricity, either by the storage battery, the conduit underground, or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient to the use of electricity as a motive power, may be erected and placed either between the tracks of said railroad or along the curbs of all streets, on, over,
39 across or along which said railroad may at any time be operated, under this Ordinance or the aforesaid Ordinance No. 15,547, except as by this ordinance is otherwise specially provided or excepted, and along the line of the right of way as established by this Ordinance between Vandeventer avenue and a point where said railroad crosses the city limits, said poles to be not less than twenty feet above the surface of the streets and alleys, and to be of such form and material and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; but in no case shall the poles be placed between the tracks on any street east of Vandeventer avenue, and said St. Louis and Suburban Railway Company shall have the right to make all needful and convenient changes from time to time by the construction and erection of all needful and convenient curves, trenches, excavations, sewer connections, cable and machinery, poles and wires, in any of the streets or alleys in, along, over or across which its railroad may be constructed, maintained or operated, provided that said work shall be done in accordance with plans approved by said Board of Public Improvements.

But said railway company shall cause the grade of its roadbed and tracks to conform to the grades of the streets now or hereafter established at all points where said railroad crosses any of the streets of the City of St. Louis, and when that part of its line of railroad between its present depot near Vandeventer avenue and its terminus at Sixth and Locust streets shall be operated by electric power, said company shall cause the present slots between the rails of its tracks to be closed, and the surface of the streets between the rails of said tracks to be put into condition satisfactory to the Board of Public Improvements.

SEC. 3. The St. Louis and Suburban Railway Company
40 shall commence the work of construction within six months after the approval of this ordinance, and have the entire work completed, and have the railroad authorized herein in full

operation in the transportation of passengers in cars propelled in continuous passages by cable or electric power, within two years form the approval of this ordinance, and thereafter no cars shall be propelled on any part of its lines of railroad as herein authorized by steam locomotives. And from and after the expiration of the two years aforesaid, the St. Louis and Suburban Railway Company, its successors and assigns, shall run passenger cars propelled by cable or electricity over its lines of railroad every day in the year during the life of this franchise as follows: On its main line from Sixth and Locust streets to Well's station from six o'clock. a. m. to eight o'clock a. m., at intervals not exceeding ten minutes; and from eight o'clock a. m. to ten o'clock a. m., at intervals not exceeding five minutes; and from ten o'clock a. m. to four o'clock p. m., at intervals not exceeding ten minutes; and from four o'clock p. m. to seven o'clock p. m., at intervals not exceeding five minutes; and from seven o'clock p. m., to ten o'clock p. m., at intervals not exceeding ten minutes, and from ten o'clock p. m., until twelve o'clock midnight, at intervals not exceeding fifteen minutes; and it shall also run a special train starting at Well's Station at five-thirty a. m., running eastwardly to Sixth and Locust streets; and on the branch line running to Forest Park, it shall run its cars at intervals not exceeding ten minutes from six o'clock a. m. to twelve o'clock midnight. East of Grand avenue it shall not run its cars at a speed greater than ten miles an hour, nor greater than twenty miles an hour west of Grand avenue on its main line, nor greater than fifteen miles an hour on its branch road to Forest Park. The failure of the said Railway Company, its successors or assigns, to have its lines of railroad authorized herein in full operation within
41 two years from the approval of this ordinance as above required, or the failure to maintain it in effective operation, and to run its cars by cable or electricity, or the attempt by said Railroad Company, its successors or assigns, to propel cars on any part of said railroad by steam locomotives after the lapse of the two years aforesaid, shall *ipso facto* work immediately a complete and absolute revocation of this Ordinance and forfeiture of all the privileges, rights and franchises granted in this Ordinance the same as if it had never been passed. The temporary suspension or the temporary use of horse power in drawing cars in the event of the derangement of the machinery or other extraordinary emergency shall not be deemed a violation of this Ordinance. The fare from any point or station on the main line or branch of this railway to any point on its lines as herein authorized to be constructed and operated shall not exceed two and one half cents for persons under twelve years of age, and not exceed five cents for persons over twelve years of age for a continuous passage one way.

SEC. 4. Within sixty days after this ordinance shall become a law said St. Louis and Suburban Railway Company, its successors and assigns, shall file with the City Register its written acceptance thereof, and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties to be approved by the Mayor and Council, conditioned that said Company shall ob-

serve all the terms and conditions of this Ordinance, and all general Ordinances now in force or that may hereafter be passed in reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs, by reason of the construction, operation or maintenances of said railroad, which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond shall be demanded and
42 given and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be cancelled and returned to the makers and the new bond filed with the Register of the city.

SEC. 5. The bond required by this ordinance, as aforesaid, shall be in lieu of any bonds required by said Ordinance Number 15,547, or by the Ordinances Number 12,852, and Number 13,282, but the said St. Louis and Suburban Railway Company shall construct, operate and maintain its railroad subject to the obligations and regulations, and with all the rights, privileges, immunities, and exemptions in said Ordinance Number 15,547 contained, except as by this Ordinance is otherwise specially provided, or excepted, and not inconsistent with the provisions of this Ordinance and free from all penalties, burdens and obligations, except such as are imposed by this Ordinance and by the aforesaid Ordinance Number 15,547, provided that when said St. Louis and Suburban Railway Company, its successors and assigns, shall have acquired the rights, franchises, privileges and immunities granted to said St. Louis Central and Western Railway Company by said Ordinance Number 15,547, the said St. Louis and Suburban Railway Company, its successors and assigns, shall have the option to construct maintain and operate its tracks on all or any portion of the route described in said Ordinance Number 15,547, excepting the right to occupy and use that part of the route authorized in said Ordinance Number 15,547 on Richmond place and Morgan street as herein provided in Section One, also excepting the right to use the alley on the south side of the roadbed of the narrow gauge or steam division of the former St. Louis, Cable and Western Railway Company, between its depot near Vandeventer avenue, Morgan street and Taylor avenue, as provided in Ordinance Number
43 15,547, excepting the seven feet thereof authorized in Section One of this Ordinance, which seven feet may be used by this company as therein provided. Nothing in this section shall be so construed as to relieve the St. Louis and Suburban Railway Company from any obligation in regard to the amount of money to be paid to the City of St. Louis under the provisions of Ordinance Number 15,547.

SEC. 6. The right to use the three feet contiguous to the north line and seven feet contiguous to the south line of the present roadbed or right of way of said steam division of said railroad from its present depot near Vandeventer avenue to the west line of Taylor avenue, and also the right to use five feet contiguous to and on each side of the present roadbed or right of way of said steam division of said railroad between the west line of Taylor avenue and a point

where said railroad crosses the westerly City Limits in any alley or street now or hereafter established, as granted by this Ordinance, shall cease and terminate whenever said St. Louis and Suburban Railway Company, its successors and assigns, shall cease to use, as motive power for the moving of its cars, electricity or cable power, as in this ordinance is authorized and required.

SEC. 7. No freight depot, coal yard, lumber yard, stock or cattle yard shall be established, erected or maintained by this company, its successors or assigns, anywhere along the lines of its railroad in the City of St. Louis, nor shall any freight or cattle cars be run on any part of its railroad in the City of St. Louis, nor shall any cattle, stock, or freight be carried thereon after the road is ready for operation by cable or electricity, and in no event after the lapse of two years from the approval of this ordinance, excepting freight required for the construction, maintenance and operation of said railroad, and excepting family supplies (excluding coal), for the
44 use of persons living on or near the line of said railway, which may be carried on said road west of Vandeventer avenue, but not east of said avenue. Any violation of the provisions of this section by said company, its successors or assigns, shall work a forfeiture of all the rights, franchises and privileges in this ordinance granted.

SEC. 8. The said railway company shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail in perfect repair as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street over which it runs or crosses, and between the rails of the same, or better material, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the repairing or reconstruction of said street; and provided, further, that at all curves, switches and railway crossings, the space between the rails, and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

SEC. 9. Said railway company hereby agreeing to construct a depot building and waiting-room to be located at the terminus of its tracks in Forest Park in accordance with the following conditions and provisions, to-wit: Said railway company, its successors and assigns, shall cause plans and specifications to be prepared for said depot building and waiting room by a skillful architect or architects, and to cost not less than twenty-five thousand dollars, which said plans and specifications shall be submitted to and shall be subject to the approval of the Board of Public Improvements, and when so approved said company, its successors or assigns, shall procure
45 bids for the construction of said depot building and waiting room from at least three responsible parties, which said bids shall be submitted by said company, to said Board of Public Improvements, and said Board shall accept the lowest of said bids; but no bids shall be accepted by said Board unless the same shall amount to at least the sum of twenty-five thousand dollars, and said

company, its successors or assigns, shall thereupon cause said depot building and waiting room to be constructed at its own cost and expense in accordance with said plans and specifications, and according to the terms of the contract so awarded by said Board of Public Improvements, and the construction of said depot building and waiting room shall be under the supervision of said Board of Public Improvements. Said depot building, when completed, shall become the property of the City of St. Louis, and be under the regulations of the Park Commissioners, subject, however, to the use of the said Railroad Company, as a passenger depot.

SEC. 10. This Ordinance and all the rights, privileges and franchises hereby granted shall continue in force for the term of forty-five years from the date of its approval.

Approved February 6, 1891.

EXHIBIT "C."

[19,350.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks from its present terminus on Locust street, near Sixth street, and construct a railroad over, along and across certain streets, in the City of St. Louis, and to operate its cars over and upon the tracks of certain other railroads, and to operate the same by electric power, and also authorizing the St. Louis and Meramec River Railroad Company to join with said St. Louis and Suburban Railway Company in said construction, and to maintain and operate its cars over the same tracks and route with electric power, and authorizing said companies to operate ambulance and funeral cars and carry household supplies, and prescribing conditions for the rights hereby granted.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company and the St. Louis and Meramec River Railroad Company, their successors and assigns, are hereby authorized and empowered to extend the tracks of the St. Louis and Suburban Railway Company and construct, operate and maintain their respective lines of railway as follows: Beginning at a point in the south track of the St. Louis and Suburban Railway Company on Locust street, near the intersection of Sixth street, thence eastwardly with a single track curve on Locust street and Sixth street, connecting with the track of the Union Depot Railway Company on Sixth street; thence southwardly, over, along and upon said track of the Union Depot Railway Company on Sixth street to a point where the tracks of the Southern Electric Railroad Company connect with the tracks of said Union Depot Railway Company on Sixth street, near the north side of Pine street; thence south on and along said Sixth street, over and upon the track of the South-

ern Electric Railroad Company to a point near Elm street with the right to cross all intervening streets and railroad tracks; thence eastwardly with a single track curve connecting with the south track of the St. Louis Railroad Company on Elm street; thence east on Elm street over and upon the south track of said St. Louis Rail-
47 road Company to its terminus on Elm street near Broadway; thence east on Elm street with a single track over and across the tracks of the St. Louis Railroad Company on Broadway to the east line of Broadway; thence east on Elm street to the west line of Fourth street with a double track which may be used for such switching and standing of cars as may be incidental and necessary to the regular business of said companies; thence with a single curve track to connect the south track on Elm street with the east track of the People's Railway Company on Fourth street; thence north over and upon said east track of the People's Railway Company to Locust street; thence west with a single curve track on Fourth and Locust streets and across the west track of said People's Railway Company to a connection with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street; thence west over and upon said north track, and across the tracks of the St. Louis Railroad Company on Broadway to a point near Sixth street; thence west and across the tracks of the Cass Avenue and Fair Grounds Railway Company and of the Union Depot Railway Company on Sixth street to a connection with the north track of said St. Louis and Suburban Railway Company on Locust street near Sixth street; provided, however, that said companies may build, with proper curve connections with their track provided for above on Elm street and with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street near Fourth street, a temporary single track on Fourth street betwen Elm and Locust streets, east of and as near as practicable to the east track of the People's Railway Company, the east rail of said temporary track to be distant at least ten feet from the east curb of the street; and maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Company have been so recon-
48 structed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company upon the east track thereof as provided above in this section, between Elm and Locust streets; said companies shall be required, and they hereby agree, to remove such temporary track and restore the street to its former condition, to the satisfaction of the Street Commissioner, whenever the tracks of the People's Railway Company are reconstructed as above provided, and said companies are able to begin the operation of their cars on the east track thereof.

If said companies fail to remove such temporary track when they are able to begin the operation of their cars upon the east track of the People's Railway Company, after the tracks of said last named company shall have been reconstructed as above provided, such failure shall work a forfeiture of all the rights and privileges granted

by this ordinance and shall constitute a breach of the bond given under the provisions of this ordinance, and the city shall remove such temporary track and restore the street at the cost of said companies, such cost to be recovered by the city against the bond given under the provisions of this ordinance.

SEC. 2. Said lines of railroad hereby authorized shall be operated by electric power, either by storage battery, conduits underground, the overhead wire system, through overhead and supplementary ground circuits, or any other electric system. Said companies may erect iron poles to carry overhead wires. The feed wires shall not be less than twenty feet above the surface of the street, said poles to be placed along the curbs of streets at such distances apart as may be deemed necessary for the safe and proper operations of said railroads, and the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company may also construct, maintain and operate all curves, turnouts, switches, sidings, crossings, crossovers and connections, make all excavations which are reasonably necessary and convenient for the operation of their tracks along the route which they are by this ordinance authorized to use and occupy. The general plan, character and location of the poles shall be submitted to and approved by the Board of Public Improvements.

SEC. 3. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, may run their cars over said route as hereby authorized, at a rate of speed not to exceed ten miles per hour.

SEC. 4. Whenever any of the streets through which the tracks of said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, authorized by this ordinance to be reconstructed, are laid, shall be repaired or reconstructed, said companies shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed to the satisfaction of the Street Commissioner, and said companies shall cause the grade of the roadbed and tracks authorized by this ordinance to be constructed to conform to the grades now or hereafter established of the streets in which said tracks are laid, and at all points where said railroads cross any of the streets of the City of St. Louis.

SEC. 5. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, shall, within sixty days after the approval of this ordinance, file with the City Register their joint written acceptance of all the provisions hereof; and also their joint bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said companies, and each of them, jointly and severally, shall observe all the terms and conditions of this ordinance and all general ordinances of the City of St. Louis now in force,

or that may hereafter be enacted in reference to street railways, and that they shall hold the City of St. Louis harmless from the payment of all or any damages and costs which may be established against the City of St. Louis by reason or on account of the construction, operation and maintenance of said railroads, or either of them, or by reason of the failure of said railway companies, or either of them, to comply with all the terms and conditions of this ordinance; which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond is demanded by the Mayor, and given by said railroad companies, and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers, and the new bond filed with the Register of the city.

SEC. 6. Said companies may run United States mail, ambulance and funeral cars, and cars for the transportation of family goods and supplies (excepting coal) over the tracks hereby authorized.

SEC. 7. In consideration of the rights and privileges granted by this ordinance, said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, their successors or assigns, each year, until the expiration of the rights and privileges granted by this ordinance, pay to the Treasurer of
51 the City of St. Louis, for account of said city, the sum of three thousand five hundred dollars per annum, on the thirty-first of December of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

SEC. 8. The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

SEC. 9. This ordinance shall continue in force until February sixth, nineteen hundred thirty-six.

Approved April 5, 1898.

EXHIBIT "D."

[19,393.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks running north on Union avenue, and to construct, maintain and operate its double track electric railroad along and across certain other streets and highways in the City of St. Louis, and to operate its said extension railroad by electric power, and to relinquish its rights to operate a certain portion of its said line or railway already constructed and operated on said Union avenue, and in Forest Park, under Ordinance number fifteen thousand nine hundred and fifty-four of the City of St. Louis, and to repeal section nine of said last named ordinance; also to operate funeral and ambulance cars, and to carry household supplies, and prescribing conditions therefor.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company, its

lessees, successors and assigns, is hereby authorized and empowered to extend its double tracks running north and south on
52 Union avenue in said city, and to construct, maintain and operate a double track railroad, together with all necessary turnouts, switches, crossings, cross-overs, connections and loops, over, along and upon the streets, alleys and public places on the following route, viz: From a point where the railway or railroad of said St. Louis and Suburban Railway Company intersects Union avenue, being the most northerly point of its tracks, running and authorized to be constructed and operated north and south on said Union avenue, under ordinance number fifteen thousand nine hundred and fifty-four of said City of St. Louis; thence northwardly, with a double track, along and over said Union avenue, and across and along all intervening streets, alleys and public places to the Natural Bridge Road, thence over private property, or over and along Union avenue, whenever opened, to Bircher street; thence eastwardly on, over and along said Bircher street, and across and along all intervening streets, alleys and public places to Bernays avenue; thence northwardly on, over and along said Bernays avenue, across and along all intervening streets, alleys and public places to Florissant avenue in said city; with the right to make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its said tracks along said route; Also to construct, maintain and operate double tracks on Maple avenue from the western city limits, east on Maple avenue to a connection with the present tracks of said company at or near the point where said tracks cross Maple avenue, at or near the intersection of Maple and Hodiamont avenue.

SECTION 2. Said extension of said line of railroad, as herein authorized, in connection with and as part of its present line of road operated under said Ordinance number fifteen thousand nine hundred and fifty-four, shall be operated by electric power, said
53 operation, at the option of said St. Louis and Suburban Railway Company, its successors and assigns, to be by storage battery on the cars, or by wire or wires placed in an underground conduit or conduits, or by an overhead wire or wires supported by iron or steel poles, or of such other material as may be approved by the Board of Public Improvements of said city, under whose supervision all of said work is to be done. Said poles may be erected and placed either between the tracks of said railroad or along the curbs of all the streets on, over, across or along which said railroad may at any time be operated under this ordinance. The wires on said poles shall not be less than twenty feet above the surface of the street. The general plan, character and location of the poles and overhead wires will be submitted to and approved by the Board of Public Improvements.

Said railway company, its successors or assigns, shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the streets over which it constructs its said extension.

SECTION 3. The said St. Louis and Suburban Railway Company shall commence the work of construction of said extension within six months after the approval of this ordinance, and complete the same to the Natural Bridge Road within two years from said approval, and the balance of said road shall be completed within two years from and after the establishment of grade by the said City of St. Louis on the whole of said route and from and after the expiration of said two years last named, the said railway company, its successors and assigns, shall run passenger cars over its said extension of line of railway every day in the year during the life of this franchise, as follows: At intervals not exceeding ten minutes, from six o'clock a. m. to midnight. Said railway company shall not run its cars at
54 a speed greater than fifteen miles an hour on said extension of its route. The fare from any point or station on said extension of said railway to any point on the line of said extension, or to any point on its main or branch lines operated under the authority given by Ordinance number fifteen thousand nine hundred and fifty-four or to any point on the St. Louis and Meramec River Railroad Company's line of railroad within the city limits, or from any point on said main line and branches operated under said Ordinance number fifteen thousand nine hundred and fifty-four, or from any point on said St. Louis and Meramec River Railroad Company's line within the city limits to any point on said extension, shall not exceed two and one-half cents for persons under twelve years of age and shall not exceed five cents for persons over twelve years of age, for a continuous passage one way. And the said St. Louis and Suburban Railway Company shall issue to passengers who have paid regular fare, and who may request the same, the necessary transfer ticket, or tickets, entitling such passenger to immediate continued passage from the point where the transfer is made, over said extension line, or over said main line and its branches, as the case may be.

SECTION 4. Within sixty days after this ordinance shall become a law, said St. Louis and Suburban Railway Company, its successors and assigns, shall file with the City Register its written acceptance thereof and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said company will observe all the terms and conditions of this ordinance, and all general ordinances now in force, or that hereafter may be passed with reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs which may be estab-
55 lished against the said city by reason of the construction, operation and maintenance of said railroad, which bond shall be renewed from time to time, whenever demanded by the said Mayor, and whenever a new bond shall be demanded, given and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers and a new bond filed with the Register of said city.

SECTION 5. Said railway company, its successors or assigns, shall not allow any freight cars to be run over its lines, including this extension, excepting for the transportation of family goods and sup-

plies (excluding coal), and for the use of persons living on or near the lines of said railroad, said company may run cars to carry such family goods and supplies, also United States mail, ambulance and funeral cars, from any point on this extension to and from its station about five hundred feet west of Vandeventer avenue, at a point where it leaves Morgan street to connect with its private right-of-way.

SECTION 6. The said railway company shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail, in perfect repair, as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street over which it runs or crosses, and between the rails, of the same or better material, to the satisfaction of the Street Commissioner; and said spaces shall be repaved and reconstructed as often and whenever the city shall by an ordinance direct the repairing or reconstruction of said street; and provided, that all curves, switches and railway crossings, space between the rails and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

56 SECTION 7. The said St. Louis and Suburban Railway Company shall relinquish and surrender to said city in part consideration of the rights, privileges and authority herein granted, its authority, license and permission given it by Section one of Ordinance number fifteen thousand nine hundred and fifty-four, to construct and operate double tracks across the Wabash Railroad Company's tracks on Union avenue, to a point three hundred feet in Forest Park, and the southern terminus of said tracks shall be at a point on said Union avenue in the northern line of the right of way of said Wabash Railroad; and the acceptance of this ordinance, as provided by Section four hereof, shall be sufficient evidence of such relinquishment and release. Said railway company shall remove its tracks from said southern terminus established by this section to its present southern terminus in Forest Park, within ninety days from the approval of this ordinance, and shall restore the street to its former condition. Section nine of said Ordinance number fifteen thousand nine hundred and fifty-four shall be, and is hereby, repealed; such repeal, however, not to take effect until the acceptance of this ordinance, as provided by Section four hereof.

In consideration of the repeal of said Section nine of Ordinance number fifteen thousand nine hundred and fifty-four, and in lieu of the requirements thereof, the said railway company shall be required and hereby agrees to cause to be graded the alleys along its right of way west of Vandeventer avenue, and to build suitable retaining walls if necessary for such alleys east of Sarah street, said walls to be located so as not to interfere with the right of said company to occupy and use said alleys under provision of Section one of Ordinance number fifteen thousand nine hundred and fifty-four. Such improvements to be made according to plans and specifications submitted to and approved by the Board of Public Improve-
57 ments; provided, however, that the said railway company shall not be required to expend more than twenty-five thou-

sand dollars for such improvements. And said railway company shall also dedicate to public use and open and grade in lot twelve, City Block number three thousand seven hundred and fifty-four, an alley twenty feet wide from Morgan street to the alley which extends along the south side of its right of way.

SECTION 8. All of the provisions of said City Ordinance number fifteen thousand nine hundred and fifty-four, so far as the same are in force and apply to the present line of the St. Louis and Suburban Railway Company, shall continue in force and apply to the entire line of railway, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

SECTION 9. In consideration of the right and franchises granted by this ordinance, said St. Louis and Suburban Railway Company, its successors or assigns, shall, beginning two years from the approval of this ordinance, pay to the Treasurer of the City of St. Louis, for account of the said city, on the last day of December of each year, and for a term of five years, the sum of one thousand dollars, and from that time up to the year nineteen hundred and twenty the sum of two thousand dollars per annum and thereafter until the expiration of the rights and franchises granted by this ordinance, the sum of four thousand dollars per annum.

This ordinance and all the rights privileges and franchises hereby granted shall continue in force until February sixth, nineteen hundred and thirty-six.

SECTION 10. Any failure on the part of said company, its successors or assigns, to comply with the conditions and require-
58 ments of this ordinance, shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

SECTION 11. The St. Louis and Suburban Railway Company, in accepting this ordinance, agrees to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force or which may hereafter be enacted and applicable to its entire line of railroad or any part thereof.

Approved June 10, 1898.

Exhibit "E."

[21,087.]

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

Section One. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

59

Section Twenty-one Hundred and Thirty-four. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

Section Twenty-one Hundred and Thirty-five. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

Section Twenty-one Hundred and Thirty-five A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by

it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon
60 which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times
61 to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the

License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A
62 failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

[19,550.]

An Ordinance to Partially Improve Neosho Street Between Broadway and Michigan Avenue.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause Neosho street, between Broadway and Michigan avenue, to be partially improved by grading, preparing ground for the superstructure, laying on the roadway a sub-foundation of rough rock, twenty feet wide, and placing thereon a course of macadam, with a binding material and a top dressing of gravel, and making all proper connections and intersections with other streets and alleys.

63 SEC. 2. The sub-foundation of rough rock and the macadamizing shall be of limestone, the binding material shall be of loam, sand or macadam screenings, and a top dressing of gravel shall be used to cover the surface of the roadway.

SEC. 3. The grading shall be done in accordance with the directions of the Street Commissioner. The ground for the superstructure shall be prepared and the roadbed properly formed to a depth of fifteen inches below the intended surface of the roadway. On this roadbed there shall be placed a sub-foundation of rough rock, six inches deep and a layer of broken stone of macadam nine inches deep,

which shall be well compacted by rolling, after which the void spaces shall be filled with loam, sand or macadam screenings by flushing with water. On the surface thus formed there shall be spread a covering of gravel. The whole shall then be well rolled.

SEC. 4. The cost of preparing ground for the superstructure, subfoundation of rough rock, macadamizing, binding material, top dressing, rolling and all proper connections and intersections required, shall be charged as a lien upon the adjoining property fronting or bordering on the improvement herein provided for, and shall be paid by the owners thereof. When said work is completed, the President of the Board of Public Improvements shall compute the cost thereof, and levy and assess the same, as a special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf of the contractor, bills of such cost and assessment, accordingly, as required by law.

64 SEC. 5. The cost of the grading shall be paid by the City of St. Louis, and the sum of three hundred dollars is hereby appropriated on account thereof, payable out of the fund set apart for street improvements.

Approved November 25, 1898.

[19,954.]

An Ordinance to Reconstruct Alley in City Block Number Eight Hundred and Ninety-four.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause alley in city block number eight hundred and ninety-four from Eighteenth street to Nineteenth street, and between Market street and Chestnut street, to be reconstructed by taking up and removing the old pavement, preparing the ground for the superstructure, laying a roadway pavement of vitrified paving block on a concrete base and making all proper connections and intersections with other streets and alleys.

SECTION 2. The base shall be a bed of hydraulic cement concrete and the paving shall be the best quality of vitrified paving block, laid on a bed of sand.

SECTION 3. The old pavement shall be removed and the ground for the superstructure prepared to a depth of twelve and one-half inches below the intended surface of the roadway. On the roadbed a base of hydraulic cement concrete, six inches deep, shall be laid; on this base there shall be placed a pavement of the best quality of vitrified paving block. The blocks shall not be less than nine inches nor more than twelve inches long; not less than three and one-

65 half inches nor more than four and one-half inches wide; not less than five inches nor more than six inches deep; they

shall be set on edge on a bed of clean, coarse sand of sufficient depth to bring the upper surface of the blocks, after they have been well rammed, to the true surface of the pavement. The joints shall be completely filled with grout, composed of one part best Portland Cement to one part of sand.

SECTION 4. The cost of the foregoing work and all proper connections and intersections required shall be charged as a lien upon the adjoining property fronting or bordering on the improvements herein provided for and shall be paid by the owners thereof. When said work is completed the President of the Board of Public Improvements shall compute the cost thereof and levy and assess the same as special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptrolier, on behalf of the contractor, bills of such cost and assessment accordingly, as required by law.

Approved February 23, 1900.

And thereupon a subpœna in Chancery was issued in said cause, which subpœna, with the marshal's return thereon, is in words and figures as follows, to-wit:

66 *Subpœna.*

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, set:

In the Circuit Court of the United States in and for the Eastern Division of Said District.

The President of the United States of America, to City of St. Louis, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, on the first Monday of June next, at the City of St. Louis, then and there to answer the bill of complaint of St. Louis & Suburban Railway Company, a citizen of the State of Missouri, filed against you on the 23rd day of April, 1904; hereof fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 23rd day of April, 1904.

Issued at office, in the City of St. Louis, under the seal of said Circuit Court, the day and year last aforesaid.

JAMES R. GRAY, *Clerk.*

MEM.—The Defendant to enter its appearance in this suit in the Clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

JAMES R. GRAY, *Clerk.*

67 I certify that I executed this writ at the City of St. Louis in the above named district, on the 26th day of April, 1904, by delivering a true copy thereof as furnished by the Clerk to Rolla Wells, Mayor of the within named defendant Corporation, the City of St. Louis.

Marshal's Fees.

One service at $2.00	$2.00
Mileage, 1 mile at 6 cents	.06
Total	$2.06

WILLIAM L. MORSEY,
U. S. Marshal, Eastern District of Missouri.
By LOUIS WILD, *Deputy.*

And afterwards on the 2nd day of May, 1904, the defendant entered its appearance, which is in words and figures as follows, to wit:

Appearance.

No. 4987. Equity.

ST. LOUIS & SUBURBAN RAILWAY CO.
vs.
CITY OF ST. LOUIS.

The undersigned hereby enter appearance for defendant in the above entitled cause.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant.

And afterwards, to-wit, on the 1st day of June, A. D., 1904, there was filed in said cause an Answer, which said Answer is in words and figures as follows, to-wit:

(*Answer.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4987.

ST. LOUIS AND SUBURBAN RAILWAY COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

(Answer.)

68 Now comes the defendant in the above entitled cause and for its answer to the complainant's bill in equity, and show-

ing cause why no injunction or other relief prayed for should be granted, states:

(1.) This defendant denies each and every allegation in said complainant's bill contained, except as hereinafter specifically admitted.

(2.) Defendant admits for the purpose of this cause that the complainant is a corporation created by and existing under the laws of the State of Missouri, having its principal offices and place of business in the locality alleged in the complaint, and states that said complainant is engaged in the business of transporting passengers from one point to another within the City of St. Louis, for hire, on street railways.

(3.) Defendant further admits that it is a municipal corporation of the State of Missouri, situated in the Eastern Division of the Eastern District of said State, and states that it, the said city, is duly organized and possessed of its Charter, under and in pursuance of the provisions of the Constitution of said State as set forth therein in Article IX, sections 20 to 25 inclusive and amendments thereto.

(4.) Defendant further states that at all times mentioned in the complaint said Constitution (in Article XII, section 20) provided that:

"No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

(5.) Defendant admits that under Article X, section 1 of the Charter, it is and at all the times stated in complainant's bill was, empowered, through its Municipal Assembly, by ordinance,
69 to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right-of-way, or regulating and controlling them after their completion; and also had power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a *per capita tax* on the *passengers* transported, or an *annual tax* on the *gross receipts* of such railroad, or on *each car*, and that no street railroad should be incorporated or built in the City of St. Louis except according to the above and other conditions in such Charter, and in such manner and to such extent as provided by ordinance.

And defendant states that it is and was by section two of said Article X of its Charter empowered to regulate the time and manner of running cars, and the rates of fare on street railroads then or thereafter to be built, and the sale of tickets and exchange thereof between the several companies, and to tax the property of street railway companies in such manner as might be provided by law.

And that under section three of said Article X of said Charter it is provided that any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indispo-

sition and surrender thereby all chartered franchises as provided by ordinance.

And that by section five of said Article X of said Charter all street railroad companies are and were required to keep the street between the rails and to the extent of 12 inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails to be of the same material as the street itself.

70 That complainant took all and every franchise, right or privilege granted or conferred by any ordinance subject to all the foregoing powers, and that the provisions in ordinances referred to in complainant's bill requiring the same and similar obligations to repair are of no more effect than if they had been omitted, being the law at all events, and cannot operate as a consideration to the city.

(6.) Defendant further states that acting through its Mayor and Assembly by ordinance, it had (under its Charter, Article III, section 26, clause eleventh) sole power and authority to grant to persons or corporations the right to construct railways in the city, but at all times subject to the right to amend, alter or repeal any such grant in whole or in part, and to regulate or control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles. Defendant states that any and all privileges, rights, franchises or immunities granted or conferred on complainant or its assignors, were knowingly taken subject to the exercise of any of the powers herein set forth whenever defendant saw fit so to do.

(7.) And defendant states that having exclusive and plenary power under the Constitution, statutes, Charter provisions and laws of the State to grant or withhold its consent to the complainant and its assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did when complainant desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a

71 franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainant's bill, and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainant and its assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise *of* right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a *license fee* for the exercise of such right so conferred on the aforesaid conditions, nor

to require payment of a *general property tax on complainant's property.*

(8.) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainant's bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its Charter Article III section 26, clause fifth, by ordinance to *license, tax* and regulate street railroad *cars,* (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21087, approved March 25, 1903, (being the same the enforcement of which complainant seeks to enjoin) which is as follows, to-wit:

[21,087.]

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one
72 hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

Section One. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

Section Twenty-one Hundred and Thirty-four. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

Section Twenty-one Hundred and Thirty-five. All persons, co-partnerships, associations, corporations and companies embraced
in the foregoing section shall pay the License Collector a
73 quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of

April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number of figures shown on the said passenger register or indicator when said car was dis-
74 continued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday, or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporar-ly inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars

per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every Person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or
75 interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October, and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall
76 said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

(9.) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privileges conferred upon the complainant or any of its assignors; that the obligations assumed by complainant and its assignors in the respective ordinances conferring franchises, rights and privileges were in no sense *license fees* or *license taxes* upon *street cars*, but only conditions under which the city consented that said complainants and their assignors could obtain the valuable right to the use of its streets, and in no way operated to exempt complainant from the imposition of *license taxes* and *fees* for the exercise of their business and the rights conferred by said franchise. On the contrary

defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25.00 each year on each street car operated by any street car company and which license fee and tax complainant had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said company upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And defendant further states that when said complainant accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned,

77 and, that it at all times, and all the assignors of said company, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21,087.

And defendant specially denies that the amount required to be paid is as alleged by complainant "absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it and to the proper discharge of the obligations imposed upon it by the several special ordinances" by it set forth or cast a cloud on the title of the properties of complainant, which impairs its credit.

Defendant states that said *license fee or tax* is perfectly lawful and reasonable, and does not interfere with the conduct of complainant's business, but that if complainant is unable or indisposed to continue its said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790*a* of ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of its said franchises and chartered rights, which action complainant has declined to adopt, but on the contrary in open violation of said ordinance 21087, operates street cars and engages in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10.) Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies equally with complainant, and that it agreed on June 16, 1898, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinances 19392 and 19393 and referred to in said complainant's bill, and without which the

78 same would not have become effective, to accept all obligations therein imposed on said complainant, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways; and said respective assignors of complainant entered into similar agreements as a condition permitting them to assign such rights or franchises to complainant, wherein said assignors

and each of them agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

(11.) Wherefore, defendant having fully answered prays to be hence discharged without day and that complainant be required to pay its costs herein incurred.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant, the City of St. Louis.

And afterwards, to-wit: on the 2nd day of July, A. D. 1904, there was filed in said cause a Reply, which said Reply is in words and figures as follows, to-wit:—

(*Reply.*)

In the United States Circuit Court of St. Louis, Missouri.

United States Circuit Court, St. Louis, Mo.

No. 4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Replicant,
vs.
CITY OF ST. LOUIS, Defendant.

This replicant, the St. Louis & Suburban Railway Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendant, the City of St. Louis, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contain material or effectual in the law to be replied unto, confess, or avoid, or traverse, or deny, is true; all which matters and things this replicant is ready to aver, maintain, and prove, as this Honorable Court shall direct and humbly prays as in and by its said bill it hath already prayed.

JEFFERSON CHANDLER,
Solicitor for Replicant.

79 And afterwards, to-wit: on the 22nd day of December, A. D. 1904, there was filed in said cause a Stipulation, which said Stipulation is in words and figures as follows, to-wit:

(*Stipulation.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. In Equity.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Stipulation.

It is hereby agreed and stipulated by the defendant, the City of St. Louis, through its counsel, that the preliminary injunction granted by this Court on motion of the United Railways Company, of St. Louis, and the St. Louis Transit Company, be extended on motion of the St. Louis & Suburban Railway Company, and the St. Louis & Meramec River Railroad Company, so as to include the two last named complainants within the order granting a preliminary injunction restraining the City of St. Louis from enforcing an alleged ordinance No. 21087 against said complainants, the St. Louis & Suburban Railway Company and the St. Louis & Meramec River Railroad Company, or either of them, with same effect as if the order made had included said last named companies and no greater.

CHAS. W. BATES,
WM. F. WOERNER,
Counsel for the City of St. Louis.

And thereupon, to-wit: on the said 22nd day of December, A. D. 1904, there was filed in said cause a Motion for a Preliminary Injunction, which said Motion for a Preliminary Injunction is in words and figures as follows, to-wit:—

(*Motion for a Preliminary Injunction.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. In Equity.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

80 *Complainants' Motion for a Preliminary Injunction.*

Now come the complainants in the above entitled cause and move the Court to grant a preliminary injunction restraining and enjoining the defendant, City of St. Louis, its officers and agents, from in any wise asserting or seeking to enforce any of the provisions of the alleged ordinance of said City, No. 21087, assuming

to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents, and each of them, from in any wise, by suit, or otherwise, asserting or enforcing said alleged ordinance No. 21087 against complainants, until the further order of this Court in the premises.

And in support of said motion said complainants refer to their bill herein, and to the ordinances of the City of St. Louis recited in said bill.

JEFFERSON CHANDLER,
JOHN LIONBERGER DAVIS,
Counsel for Complainants.

And thereupon, to-wit: on the said 22nd day of December, A. D. 1904, the following among other proceedings were had and appear of record in said cause as follows, to-wit:—

(*Preliminary Injunction.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Preliminary Injunction.

The Court having fully considered complain-t's application for a preliminary injunction, doth order that said application be granted, and it is now

81 Ordered, adjudged and decreed by the Court, that the defendant, City of St. Louis, its officers and agents, be, and they are hereby enjoined and restrained, until the further order of this Court, from in any wise asserting or seeking to enforce any of the provisions of an alleged ordinance of the said City, numbered 21,087, assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or either of them, on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents, and each of them from in any wise, by suit or otherwise, asserting or enforcing said alleged ordinance numbered 21,087 against the complainants, or either of them.

ELMER B. ADAMS, *Judge.*

And afterwards, to-wit: on the 24th day of November, A. D. 1905, there was filed in said cause Testimony for complainant, which said

Testimony for Complainant is in words and figures as follows, to-wit:—

(*Testimony for Complainant.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. In Equity.

4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Testimony on behalf of Complainant in the above entitled cases taken by consent of parties before James R. Gray, as Special Examiner, at his office Room 342 Custom House Building, Eighth-Ninth-Locust-Olive Streets, St. Louis, Mo., beginning at 10:30 o'clock in the morning of Tuesday, the seventh day of November, A. D. 1905. It being agreed by the parties that this testimony may be used in either of the above entitled causes:

Appearances: Jefferson Chandler, Esq. for Complainants. W. F. Woerner, Esq., for Defendant.

Testimony.

E. P. SOMMERS, a witness on behalf of the Complainants,
82 after being duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. CHANDLER:

Q. Mr. Sommers, will you state your full name please?
A. Edgar P. Sommers.
Q. What relation, if any, have you to the St. Louis & Suburban Railway Company?
A. I am Secretary and Treasurer.
Q. How long have you been secretary and treasurer?
A. About three years.
Q. What relation, if any, do you have to the St. Louis & Meramec River Railroad Company? Or Railway Company? I have forgotten which?
A. I am not an officer of that company.
Q. Do you know anything personally of its business?
A. Yes, sir.
Q. Do you know anything of the origin of the St. Louis & Suburban Railway Company system?
A. Yes, sir.
Q. State what its origin was?

Mr. WOERNER: In order to be able to intelligently determine whether objection is to be made to this testimony or not I will request counsel for the Complainant to state the object of the testimony, and what he proposes to prove by this witness.

Mr. CHANDLER: Well, I have no objection to that. The Bill in the Suburban case charges that the present system originated by possession of what is known as the narrow gauge system, beginning and ending wholly outside of the City of St. Louis; and it's that allegation that I want to prove.

Mr. WOERNER: I object to that line of testimony on the ground that it is immaterial, irrelevant and incompetent to the issues that are made in this case; also because such matters can be proved
83 only by competent testimony so far as the Defendant—City of St. Louis is concerned, to-wit: the ordinances; even if such testimony were otherwise admissible.

A. It was first built as the old steam narrow gauge road and started just west of the city limits, which at that time were a little west of Grand avenue. This road, or rather that narrow gauge road had changed hands a number of times. After that there was a cable line, the St. Louis Cable & Western, was constructed, and ran out as far as Grand and Olive, to Grand and Olive, or Vandeventer and Morgan; this road was operated at a loss and went into the hands of a receiver. About 1886, I think it was or somewhere around there, they started the construction on that road. It was operated for five or six years at a loss. Then a company was organized, known as the St. Louis & Suburban Railway Company, and bought up this Cable & Western and the narrow gauge road; after that the St. Louis & Suburban Railway Company reconstructed the whole system; changed it from a narrow gauge steam railway and cable road to an electrical one, and so operated it up to the present time.

Mr. WOERNER: I now move that the answer of the witness be stricken out for the reason given above in objecting to his testimony, and for the further reason that it appears that most of what witness has stated should have been proved by ordinances which would have been binding on the City of St. Louis; for the further reason that most of what he has stated should be evidenced by writing, and not subject to the verbal testimony of the witness; also because all that has been stated is immaterial to any legal issue raised in this case.

Q. What was the Western terminus of the Narrow Gauge System of which you have spoken?

A. The steam narrow gauge road?

84 Q. Yes.

A. Florissant; the town of Florissant.

Q. State whether or not any portion of that line at the time you spoke of was laid within the limits of the City of St. Louis?

A. The narrow gauge? Yes, sir; it was; it started a little west of Grand avenue.

Q. I understood you to say the limit on that side was Grand avenue?

A. Yes, sir; it was.

Q. Then state at the time of its origin whether or not any part of the line was inside the city?

A. No, sir; it was not.

Q. At what time did the reconstruction that you speak of occur?

A. About 1890.

Mr. WOERNER: Well, now, if I may interrupt you—you don't mean to say that Grand avenue was the western limit of St. Louis in 1890; do you?

A. No, sir.

Q. Do you know what time the reconstruction occurred?

A. About 1890, I think.

Q. Describe the system of the St. Louis & Suburban Railway Company as it now exists?

Mr. WOERNER: I object to the question for the same reason as first above given.

A. Do you mean as to its operation, or——

Q. Its geographical existence—where does it begin and where does it end and over what streets does it pass?

Mr. WOERNER: I object for the reasons first above given; and also because the ordinance, the validity of which is here in question being Number 21087, does not purport to impose any tax or license fee on the Complainants, or either of them, for any passengers carried outside the limits of the City of St. Louis, but is confined in its operation to cars operated in the City of St. Louis; therefore whether
85 said road extends beyond the city limits, and if so to what extent and whither, is immaterial in determining any of the issues in this case.

A. It starts at Fourth and Elm and runs north on Fourth to Locust, west on Locust to Thirteenth, over Thirteenth to Linden, over to Fourteenth, north on Fourteenth to Wash, west on Wash to Morgan, west on Morgan, to 3919 Morgan, and from there on private right of way to Suburban Gardens, thence north to Florissant and Ferguson. The Union Avenue line runs from Forest Park to Walnut Park, and from there runs over Clarendon avenue and the Suburban's right of way to Union avenue; and over Suburban right of way north on Sarah street to O'Fallon Park; and south over Suburban right *right* of way on Sarah street to Manchester avenue, west on Manchester avenue to Maplewood Loop, thence west over private right of way and on public roads and streets of St. Louis county to the City of Webster and the City of Kirkwood and on to Meramec Highlands. Another line runs from 6100 Maple avenue, the city limits, over public roads to 66th street, south on 66th street and right of way through the town of Clayton to Brentwood, and from Brentwood through Webster and Kirkwood; and also from Brentwood east over right of way to Forest Park; also another line from Ferguson Junction just north of Ramona Park to the town of Ferguson.

Mr. WOERNER: I now move that the answer of the witness be

stricken out in so far as it refers to all portions of said road outside of the limits of the City of St. Louis.

Q. How many miles of the system that you describe lie within the City of St. Louis, and how many miles lie outside of the City of St. Louis?

A. I don't believe I can answer that; I can give you the total mileage.

Q. Just answer as far as you can?

A. The total?

86 Mr. WOERNER: I want to object on the ground that such information can only be evidenced by the ordinances authorizing said railways to operate their roads and cars and not by verbal statements of this witness.

A. The total mileage is a hundred and four miles.

Q. Can you in the future leave with the Examiner the number of miles of said road outside the City?

A. Yes, sir.

Q. And will you do that?

A. Yes, sir.

Mr. WOERNER: I object to the witness leaving anything with the Examiner hereafter, unless such matter be first presented to counsel for defendant and his consent obtained thereto.

Q. What was the extent of the mileage of the system at the date of the Ordinance No. 21,087?

A. In miles? About 104 miles.

Q. Same as it now is?

A. Yes, sir.

Q. What is the longest and what is the shortest distance a passenger is carried by the Suburban System for five cents?

A. Eight miles for five cents, and eight miles for $2\frac{1}{2}$ cents; that's the longest.

Q. What's the shortest? Any distance that a passenger wants to go?

A. Yes, sir.

Q. Any distance short of that that a passenger wants to go?

—. Yes, sir.

Q. What is the financial condition of the St. Louis & Suburban Railway Company?

Mr. WOERNER: I object to this question on the ground that what the financial condition of the St. Louis & Suburban Railway Company is has nothing to do with this case; and on the further ground that said question is irrevelant, incompetent and immaterial; and because the validity or invalidity of the ordinance in question

87 in this case cannot be determined by the financial condition of any particular road, for if the legality of said ordinance could be determined by such matters it might be legal as to some roads and illegal as to others, and it might be valid one year and invalid the next year; and for the further reason that the courts will not consider the reasonableness or unreasonableness of any ordinance

by fluctuating circumstances, or by evanescent conditions of any one or more roads; and because the legality of any ordinance cannot be made to depend on whether the road is making money or losing money; and for the further reason that if said ordinance could be made to depend on the financial condition of the St. Louis & Suburban Railway Company, no license or tax could be charged on a losing company, whereas it might be charged against a successful company; for all of said reasons I object to the question asked.

A. The road has always been operated at a loss.

Mr. WOERNER: I move that the answer of the witness be stricken out for the reasons given in the objection made to the question asked; and because whether said road was operated at a loss or not must be determinated by the figures of income and expense and not by a conclusion of the witness as to the fact.

Q. Was it, at the date of this ordinance that you speak of?

Mr. WOERNER: Same objection.

A. Yes, sir.

Q. State whether or not at the date of the ordinance you speak of, to-wit: No. 21,087, the said System had issued any stock or bonds.

Mr. WOERNER: Same objection.

(Question withdrawn.)

Q. State whether the System has outstanding mortgage bonds, and if so, how many?

88 Mr. WOERNER: I object on the ground that it is immaterial what indebtedness of complainant is and whether they have got any mortgage bonds out or other debts, for the reason heretofore given in the objection to the next two preceding questions; and for the further reason that if there is any such indebtedness, it is postponed to the payment of the taxes and license fees called for in Ordinance No. 21,087; and the Suburban Road or any other Company cannot affect the right of the City of St. Louis to pass ordinances binding on them by any bonds or other obligations that they may enter into.

A. Yes, sir; seven and a half million dollars.

Mr. WOERNER: I now move that the answer of the witness be stricken out for the reasons given in the objections to the question asked; and for the further reason that such information must be obtained by documentary evidence, not the verbal statement of this witness, it being impossible for him to know of these things independent of the records of the company.

Q. What is the amount of its capital stock?

Same objection.

A. Seven million five hundred thousand dollars.

Q. Has the authorized capital stock been issued?

A. No, sir; four and a half million has been issued.

Q. Then the authorized stock is seven and a half millions, they have issued bonds to the extent of seven and a half million?

A. Yes, sir.

Q. And your capital stock consists of four and a half million *actually put in*?

A. Yes.

Q. What were the proceeds of the stock and bonds used for, for any purpose?

A. Constructing and reconstructing the system.

Q. Has there, or has there not been any dividend declared on the stock?

89 Mr. WOERNER: I object for the same reasons given in the objecting to prior questions, that these matters are of no concern in determining the validity of this ordinance; that whether this road makes money or loses money cannot in any shape, manner or form bear on the issue whether the City of St. Louis has a right to pass the ordinance in question, or whether said ordinance is valid or not.

A. No dividends have been paid.

Q. State whether or not the entire proceeds of the paper issued have been devoted exclusively to creating and benefiting the System.

Objected to for the same reasons heretofore given and because the answer must be a conclusion on the part of the witness and not a statement of facts.

A. They have been used exclusively for the construction work, reconstruction and betterments of the system.

Q. What charges does the System make for carrying passengers?

A. Five cents for adults; two and a half cents for children.

Q. State whether the fund—the fare charged—is adequate to meet the obligations of the System?

Mr. WOERNER: I object to the question as immaterial, irrelevant and incompetent; as a conclusion on the part of the witness; and as not bearing on any issue in this case; also because said charges have been fixed by agreement between the Complainant and the City of St. Louis in other ordinances of acceptance of the benefits and privileges conferred by the City of St. Louis upon Complainants in granting permission for operation of the roads.

Q. State whether the fund—the fare charged—is adequate
90 to meet the obligations of the System, thus described in the Bill of Complaint in this case in this language: "Required for the purposes of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it, and to the proper discharge of the obligations imposed upon it by the several special ordinances hereinbefore set forth."

Mr. WOERNER: I object on the ground that counsel refers to several special ordinances without stating what the ordinances are.

A. The fare as charged is not adequate to meet the obligations of the road.

Mr. WOERNER: I move that the answer of the witness be stricken out because it is a conclusion on his part without our being enabled to determine how his conclusion was brought about; because it is not a statement of any facts and because the same is irrelevant, incompetent and immaterial upon the grounds hereinbefore assigned in objecting to said question; and for the further reason that whether said fare is adequate or not does not make any difference as to the right of the City of St. Louis to pass the ordinance in question; and for the further reason that the answer upon its face carries its own refutation, because it is shown that the fare for adults is five cents and the amount of the tax is only one mill per revenue passenger, the obligation to pay said taxes and licenses fees being paramount to any other obligations of said Company.

Q. To what extent is it paramount, Mr. Woerner?

Mr. WOERNER: To the extent that you have got to meet your taxes and license fees or you cannot operate the cars.

Mr. CHANDLER: No matter what amount you may choose to assess; you may as well meet this issue squarely.

91 Mr. WOERNER: I decline to meet the question because it is more properly addressed to the Court than to counsel; and for the further reason because said ordinance requires the payment of one mill only per passenger, whereas the fare is five cents per passenger, which shows that said company must have ample funds with which to meet the obligations of this ordinance; and for the further reasons that under the charter of the City of St. Louis if the said Company cannot meet its just and lawful obligations it is authorized to surrender its charter and quit business.

Q. Did this condition prevail at the date of ordinance No. 21,087?

Mr. WOERNER: I object to this question for the reasons heretofore stated; and also because the witness has already testified that the road always was operated at a loss ever since its organization, and therefore, according to his view of looking at the thing, they never should have paid any taxes of any kind to anybody.

Q. Mr. Stenographer, just change that question to make it read "at and prior to the date of the ordinance."

Mr. WOERNER: I object to any such interlineation of the question as will make my objection without force; ask the question over again if you wish to. I wish the record to show the question as originally asked by Mr. Chandler.

(Here follows some colloquy between counsel; at the conclusion of which the question is withdrawn.)

Q. State whether this condition prevailed at and prior to the enactment of ordinance No. 21,087?

Mr. WOERNER: I wish now to remove my objection that I made to the question that was withdrawn.

92 A. It did.

Q. State under what circumstances and for what reasons the fare of five cents for adults and two and a half cents for children is collected.

Mr. WOERNER: I object to the question on the ground that the reasons are utterly immaterial and have noth- to do with the validity of the ordinance in question.

A. It is done by City Ordinance; we are allowed to collect five cents for adults and two and a half cents for children.

Mr. WOERNER: I move that the answer of the witness be stricken out because such testimony must be shown by the ordinance itself, if such is the fact.

Q. Do you know whether such charge is the result of any contract between the City and the Suburban System?

A. Yes, sir.

A. I move to strike out the answer on the ground that any such contract would have been in writing and could only be proven by such writing or ordinance, and not by verbal testimony; and for the further reason that the answer of the witness is his conclusion on the situation and not a narration of any fact.

Q. Are you familiar with the financial and contractural relation between this System and the City?

A. Yes, sir.

Q. In what capacity do you act for the System, if at all?

A. As secretary and treasurer; and auditor.

Q. Secretary, treasurer and auditor?

A. Yes, sir.

Q. In the exercise of the authority of these several offices do you have personal knowledge of outstanding contract made by the System with the City?

A. Yes, sir.

Mr. WOERNER: I want to ask the witness if these contracts and agreements which he has reference to are not in every instance in writing?

93 Mr. CHANDLER: I object to the question as out of time and as a question which should be deferred to the cross examination, if answerable at all.

Q. The answer states here, Mr. Sommers, that ordinance No. 21,087 is applicable to persons engaged in transporting passengers; do you know whether there is a system of transporting passengers in the City of St. Louis by hacks and coaches.

A. Yes, sir.

Q. Is there such a system?

A. Yes, sir; there is.

Mr. WOERNER: I object to the question as irrelevant, incompetent and immaterial and because the ordinance in question does not refer to any hacks, and if it did, such fact would not bear on any issue in this case.

Q. Do you know whether there are steam railroads operating between different points in the City of St. Louis?

Same objection.

A. There are a number of them, of the steam railways, which engage in that business.

Q. What are they?

Same objection.

A. The Wabash, the St. Louis, Kansas City and Colorado; the Missouri Pacific; and the St. Louis, Iron Mountain and Southern.

Q. Do you know to what extent there has been, if at all, automobile arrangements made for the carrying of passengers during the life of this ordinance and since and prior to the enactment of the ordinance?

Mr. WOERNER: I object to the question as irrelevant, incompetent and immaterial; and on the further ground that automobiles are taxed for the privilege of running by separate ordinances
94 from the one here in question, just as heavily as street cars are.

A. There has been an automobile line to carry passengers.

Q. Within the City of St. Louis?

A. Within the City of St. Louis.

Q. Do you know whether such traffic in passengers was in competition with Complainant's System?

Mr. WOERNER: I object for the reasons heretofore given as being irrelevant, incompetent and immaterial.

A. It was in competition.

Q. Do you know whether it operated to diminish the revenue of Complainant's System?

A. It did.

Q. Do you know whether steam railways carrying passengers in the City as you have stated above operate — the revenue of Complainant's System?

A. It did.

Mr. WOERNER: Same objection.

A. I do.

Q. Do you know whether such traffic in passengers by steam railways operated to dimish the revenues of Complainant's System?

Same objection.

A. I do.

Q. Did it or did it not?

A. It did.

Q. I ask you the same question with reference to hacks?

Same objection.

A. It also diminished the revenues.

Q. I will get you to state whether Complainant's System has paid

to the City of St. Louis from time to time when due all the
95 money called for by any ordinances of the City of St. Louis, except this one mill tax?

A. Always paid them on time.

Q. In full.

A. In full.

Q. Do you know whether Plaintiff's System has kept and performed all its contracts with the City with respect to the payment of money and improvements of streets in the City that have devolved upon it by ordinance?

Mr. WOERNER: I object to the question as calling for a conclusion on the part of the witness and as immaterial, irrelevant and incompetent.

A. It has always met its obligations.

Q. In every respect?

A. Yes, sir.

Q. Does this testimony and this answer apply equally to the St. Louis & Meramec River Railroad Company?

A. It does.

Q. What per cent. on the gross earnings of the two systems is the charge for children; what per cent. of the gross earnings of the system is derived from the fares received for children?

A. I cannot state that exactly just now; I don't know that I understand what you want.

Q. Well, I will put it this way: what per cent. of the gross earnings derived from carrying children is exacted under Ordinance No. 21,087?

Mr. WOERNER: I object on the ground that this is a conclusion on the part of the witness and is not proper to be asked; the proper way to get at it is to ask the fare that is charged for minors, or rather children, and let that be computed by the Court; and on the further ground that the witness has already stated that part.

Q. I only want to save the Court the arduous labor of that computation.

Mr. WOERNER: I don't think it will be any arduous labor.

96 Q. Well, answer the question.

A. Four per cent.

Q. And what per cent. is exacted for the carrying of adults under said ordinance?

Mr. WOERNER: Same objection.

A. Two per cent.

Q. Is or is not that exaction under said ordinance a violation of the contract with the City to charge five cents for adults and two and a half cents for children?

Mr. WOERNER: I object to the question on the ground that it is clearly an improper question for a lawyer to ask any witness because it so palpably calls for a conclusion of law on the part of the witness; and because said matter is purely a question of law and

does not call for any fact; and for the further reason that the Court, as it sits in judgment in this case, is competent to pass on said question without being assisted in its conclusions by the opinions of a lay witness.

A. It is in violation of the contracts.

Q. This bill contains this allegation: "That among the lines of street railway in said City of St. Louis owned and operated by the St. Louis & Suburban Railway Company, are lines constructed, maintained and operated under and by virtue of the provisions of Ordinance No. 19,350 of said City of St. Louis, approved, April 5, 1898." Do you know whether that is a fact or not?

A. It is a fact; they were built and operated according to the franchise.

Q. Do you know whether the right to charge and collect five cents for adults and two and a half cents for children is necessary for the continued operation of the road of both of these Systems?

Mr. WOERNER: I object to the question for the reasons heretofore given in objecting to similar questions; also for the further
97 reason that the answer involves a conclusion on the part of this witness and does not call for any facts; and for the further reason that whether said charge and collection is or is not necessary doesn't cut any figure in this case and cannot be determined by verbal testimony; and that the Court will not declare this ordinance valid or invalid for anything that may be stated as the opinion of any one or more men, but will determine such question solely from the provisions of the ordinance itself.

A. It is necessary; for both Systems. And more too, if we could get it.

Q. State what effect, if any, the construction, reconstruction and equipment of Plaintiff's System has had on the development of the city along its lines?

Mr. WOERNER: I object on the ground that it has nothing to do with the merits or issues raised in this case; and also because both of Complainants never pretended to be charitable institutions acting for the benefit of the citizens of St. Louis; and because they are and always were corporations purely for the purpose of making money for themselves; and whether or not they succeeded in so doing, doesn't concern the municipal authorities.

A. When they started with the Narrow Gauge——

Q. The question is whether it has occasioned the investment in property that has brought additional revenues to the City and been influential in developing and enriching the City.

Mr. WOERNER: I offer the same objection.

A. It has developed the city all along its lines and increased the value of property; where at first it was nothing but frame houses, now it is thickly settled portion of the City with fine residences.

98 Q. Has it operated to increase the taxable revenues of the City?

Mr. WOERNER: I offer the same objection; the same as to the preceding questions; it is a matter utterly indifferent to the issues in this case, what the indirect consequences are of the operation and construction of these roads.

A. Yes, sir; it has.

Q. You may take the witness.

Cross-examination.

By Mr. WOERNER:

X Q. I don't believe I have any questions to ask this witness. Oh, yes, there is this question. Mr. Sommers, is it a fact that this ordnance No. 21,087 as you understand it is an amendment of the prior ordinance which requires a fixed tax of $25.00 as a license fee for running each car?

Mr. CHANDLER: I object as a matter not in issue at all. There is no ambiguity about the ordinance to be helped out by some prior enactment.

X Q. Do you understand that this ordinance is in place of the prior ordinance which made a fixed charge on each car?

Same objection.

A. Yes, sir.

X Q. Now, I want to ask you, whether both of your companies didn't pay that $25.00 per car tax every year so long as you were running these cars?

Mr. CHANDLER: I object because there is no such issue pending here. There is no ambiguity to be cleared up by any former action of the Company, and the contract to collect five cents and two
99 and a half cents cannot be broken down by any prior action of Plaintiffs and cannot be affected by these Companies on the stand.

X Q. They paid up every year $25.00 a car until the passage of this present ordinance?

A. Yes, sir.

X Q. And that sum was not paid under protest, was it?

A. No, sir.

Mr. CHANDLER: Just wait a moment: I want to object to the question because there is no foundation laid for the showing of any knowledge of the witness on that subject.

X Q. That's all.

At this point the further taking of testimony herein was adjourned until tomorrow (Wednesday) morning at eleven o'clock a. m., November 15th, 1905.

11 O'CLOCK A. M., WEDNESDAY, *November 15th*, 1905.

At this time the further taking of testimony was resumed, the appearances for the respective parties hereto being as on yesterday.

Direct examination of witness Sommers continued by Mr. CHANDLER:

Q. How much of the System's railway mentioned in your evidence is over private right of way?

A. In the City of St. Louis?

Q. ——.

A. Yes. Twelve miles and forty-four thousandths. (12.044.)

Q. How much is over private right of way and streets?

A. Well, over the streets—there's 28.772 miles.

Q. That includes the part of the line over streets and the part over private right of way?

100 A. No, that's just on the streets alone; I will give you the total in a minute. The Tracks on both streets and right of way would be 40.816 miles.

Q. And on the streets only exclusive of the right of way?

A. 28.772 miles.

Q. And on the private right of way?

A. 12.044.

Q. State whether or not the acquisition of this private right of way — from the City or from independent owners?

Mr. WOERNER: I object to the question as going into irrelevant matters that have nothing to do with any of the issues in this case.

A. The private right of way was from independent owners and not from the City.

Q. State whether or not the acquisition of that private right of way was expensive or not?

Mr. WOERNER: I object to the question on the ground that the answer called for will be entirely immaterial to any issue in this case, it being utterly immaterial so far as the validity of this ordinance is concerned what price was paid by the Complainant- for the acquisition of any private right of way or whether said price was big or little or whether they acquired it by gift, or how they did acquire it.

A. To the best of my knowledge, it was.

Q. Do you know at what time the private right of way was acquired from Grand avenue east?

Mr. WOERNER: If there is any such—better add that.

A. The private right of way from Grand avenue east?

Q. Do you go over any private right of way from Grand avenue east—does either System?

A. Yes, sir.

101 Q. When was the private right of way acquired in the first instance from the owners?

A. Very recently—the right of way east of Grand avenue; it's only about 150 feet.

Q. When was the private right of way west of Grand avenue acquired?

A. The majority of it in the years 1871, 1872 and 1873.

Q. Do you remember the date when the "scheme and charter" went into effect?

A. No, sir.

Q. Assuming that the Scheme and Charter went into effect in 1876, was the acquisition of this private right of way west of Grand avenue before that date?

A. Before that date; yes, sir.

Q. You say it was?

A. Yes, sir.

Q. What company operated over the private right of way previous to the enactment of the Scheme and Charter in 1876?

Mr. WOERNER: I object to the question because it has nothing to do with this case.

A. To the best of my knowledge it was the St. Louis & Florissant Railroad, the West End and Narrow Gauge, and the St. Louis Central & Western.

Q. Were the railroads that you have just mentioned a part of the private System, the two Systems?

A. Yes, sir.

Cross-examination.

By Mr. WOERNER:

X Q. Mr. Sommers, how many miles of tracks of these companies are there in the City of St. Louis on the public streets and highways?

A. 28.772.

X Q. Does that include cars going both ways?

A. Yes, sir, single track.

X Q. How much of that is east of Grand avenue, can you tell?

102

A. No, I cannot tell; these figures have been taken from the present City limits.

X Q. Well a large portion of it is, anyhow, isn't it?

A. Quite a large portion of it; yes, sir.

X Q. And of all the miles of tracks of these two companies east of Grand avenue you have a private right of way over about 150 feet only; that's correct?

A. Yes, sir.

X Q. An- that was only acquired a short time ago in order to enable your tracks to run over one block and make a shorter cut?

A. Yes, sir; that is east of Grand avenue.

X Q. How many cars do you run from, say, Fourth streets to Sarah street, at, say from seven o'clock to nine o'clock in the morning?

A. I cannot answer that that's out of my department. You would have to take that up with the operating department.

X Q. Do you know what your schedule is as to the intervals between cars?

A. No, sir.

X Q. You know they run the cars about a minute apart, don't you?

A. I don't.

X Q. You know that every one of these cars is crowded between those hours so that people cannot find seats, don't you?

A. What hours?

X Q. The hours I mentioned—from seven to nine o'clock in the morning, say.

Mr. CHANDLER: I object to the question on the ground that there is no charge made by the defendant in these cases as to inefficient management or service.

A. My office is at De Hodiamont and I cannot say what is going on down town.

X Q. Don't you know that your cars are crowded to overflowing in the evening with people going home and that you run
103 your cars just as fast as you can—what I mean is, at as short intervals as possible in order to accommodate the traffic?

A. I don't know.

X Q. Now, Mr. Sommers, I am asking you as a fair-minded man if you don't know that people have to stand in your cars all the time on account of the volume of the traffic?

Mr. CHANDLER: I object on the ground that there is no allegation to support the question and on the ground that witness has repeatedly answered that he does not know.

X Q. Well, what do you say?

A. My office is in De Hodiamont and I don't know what goes on down town.

X Q. Don't you sometimes leave the down town district at some time in order to get home?

A. No, sir.

X Q. You never do?

A. No, sir.

X Q. You never go home from seven to nine o'clock in the evenings?

A. No, sir; I go from De Hodiamont east on the cars.

X Q. Well, now are there not some occasions when you have been down town at that time of the day and have left there about that time to go west?

A. Yes, sir; once or twice.

X Q. Well now, I ask you, Mr. Sommers as a fair-minded man, whether people are not compelled to stand in your cars for lack of seats; I am not criticising your Company; I am asking you whether you don't know that traffic is so great that they cannot furnish cars to accommodate the people?

Mr. CHANDLER: I object to the question because there has been no foundation laid for knowledge on the part of the witness and because the witness has repeatedly answered that he doesn't know.

A. That's a question I cannot answer because I don't know.

104 X Q. Do you know how many people you carried last year?

A. Yes, sir.

X Q. I wish you would state what that number is?

A. Do you mean in the city alone or in the whole system?

X Q. Yes, in the city; and I am now referring to revenue or pay passengers.

A. Adult passengers—21,228,786; children, 1,677,573; total of 22,906,359.

X Q. For what year is that?

A. 1904.

X Q. Have you got the figures for 1903?

A. Yes, sir.

X Q. Just give those please.

A. Adults, 15,188,352; children, 1,251,523; total, 16,439,875.

X Q. Have you got the figures for the preceding year, 1902?

A. No, sir.

X Q. Have you got the figures for this year as far as you have taken any?

A. No, sir; I didn't have time to make those up.

X Q. Have you got any means of revenue besides the carrying of passengers?

A. We have.

X Q. What are they?

A. Rental of land and buildings; rental of freight privileges; and advertising, car advertising.

X Q. How large are your receipts from these sources besides your fares for passengers?

A. About 2 per cent.

X Q. I mean in figures?

A. I cannot give you those; I haven't those figures with me.

X Q. You mean that your receipts from these sources in proportion to the collection of fares amounts to about 2 per cent.?

A. Yes, sir.

X Q. How many cars do you operate, or did you operate last year?

A. About 110 cars a day.

105 X Q. And how many trips do they make?

A. I cannot answer that; I don't know.

X Q. Can you tell about?

A. Why, each conductor would average about six trips.

X Q. A day?

A. Yes, sir.

X Q. Have you got the figures showing how many trips you made during the year 1904?

A. No, sir.

X Q. Or any other year?

A. No, sir; I haven't those figures.

X Q. Now between Fourth street and Sarah street—all the cars of the Suburban run over those tracks do they not?

A. No, sir.

X Q. Which don't?

A. Union Avenue; Fairmount Avenue; and the line running to Clayton.

X Q. I mean those running within the City of St. Louis?

A. No, sir. The Union Avenue line.

X Q. Have you got any cars that operate wholly without the City of St. Louis?

A. Yes, sir.

X Q. What line?

A. The line known as the Brentwood Division; and the Florissant Division; and the Ferguson Division.

X Q. The Brentwood Division. They never come within the limits of the city?

A. No, sir; those that I mentioned don't.

X Q. And they are not affected by this ordinance, are they?

A. So I understand.

X Q. They are not included within the returns that you gave as of passengers carried in the City of St. Louis?

A. No, sir.

X Q. How much do you pay out in the way of interest on bonds?

A. $375,000.00.

X Q. Per year?

A. Yes, sir.

X Q. How much have you paid out for extensions of your roads in the county within the last, say, ten years?

A. I cannot answer that; I don't know.

106 X Q. How much have you paid out for extensions of your road, or any of them, within the City of St. Louis?

A. I cannot answer that; I haven't the figures with me.

X Q. How much have you paid out for construction and reconstruction?

A. Within what period of time?

X Q. Within any period that you can fix?

A. About three and a half to four million dollars.

X Q. What was that for and within what time?

A. I should say within the last 2½ to 3 years for reconstruction of lines.

X Q. Within the City of St. Louis?

A. City and County together.

X Q. I don't care about the county at this time; how about the city?

A. I cannot answer that.

X Q. Your Company has paid out a great deal of money in laying out these various lines in St. Louis county, didn't it?

A. Yes, sir.

X Q. Do you know how much?

A. No, sir.

X Q. You made these various extensions out into thinly settled region—at least as compared with city itself—with the idea of de-

veloping that country and ultimately obtaining the business, didn't you?

A. Yes, sir.

X Q. In every case of that kind, the road loses money at first, doesn't it?

Mr. CHANDLER: I object to the question unless the witness has personal knowledge.

A. So far as I know they do, yes, sir.

X Q. The idea is that ultimately when the sections build up they can carry the people who go to and from those districts, isn't it?

A. That's a fact.

X Q. And so long as the companies are doing that sort of thing and looking to the future in that way and extending their
107 lines to unsettled districts, it costs them more money than they make?

A. Yes, sir.

X Q. And that's what you've been doing?

A. Yes, in some places; yes, sir.

X Q. And that's why your company hasn't been paying any dividends?

A. No, sir.

X Q. You expect to look forward to the time when you will pay dividends don't you, by reason of this extension you are getting don't you?

A. Yes, sir.

X Q. And still notwithstanding the fact that you have been paying out these large sums of money and extending your lines into the country with the idea of discounting the future and are paying out these vast sums by way of interest on your bonds, still you state that you cannot pay the license tax that is called for by this ordinance on each car; is that right?

A. Yes, sir.

X Q. Was it your idea that the license tax or license fee must be postponed to all these other obligations?

Mr. CHANDLER: I object to the question as mere argument on the part of the counsel and as not calling for a fact on the part of the witness.

A. I think the mill tax for each passenger is unreasonable.

X Q. I didn't say anything about the one mill per passenger or anything of that kind; and I now move to strike out the answer as not responsive to the question.

A. We always have paid our license right along up to this time.

X Q. Why did you pay it?

Mr. CHANDLER: I object; this witness can only speak for himself but not for the motives of the companies.

X Q. Why did you pay it?

A. Because the vouchers were approved for payment.

X Q. Is that the only answer that you will give?

A. Yes, sir.

108 X Q. When you say that you have paid it, you mean the $25.00 tax per car, don't you?

A. Yes, sir.

X Q. And as I understand you the only reason you quit paying your license fee is because this is larger than $25.00 per car?

Mr. CHANDLER: I object as the witness is not authorized to speak for the company.

A. The vouchers were not approved and I didn't pay them.

X Q. Is that the only answer that you will give?

A. Yes, sir.

X Q. Do you know of any reason why the $25.00 tax was paid and not the tax called for by the present ordinance, except that the latter will amount to more than the former?

Mr. CHANDLER: I object as there is no issue raised as to the $25.00 tax; further, there is no ambiguity in the contract permitting complainants to charge the amount mentioned in the testimony; and there is no evidence to explain the contract needed, and therefore this is wholly immaterial.

Mr. WOERNER: In response to that statement from Mr. Chandler I want to say there is no question here as to any contract but only as to a tax on cars; neither has this anything to do with the five cents fare that the complainant is charging, the tax itself being determined by the amount equivalent to one mill per passenger carried on each car, and that the tax is not on the fare charged but is on the car; and moreover that if the complainant's position were correct that the original ordinance is a contract, that then the prior dealings between the parties would be evidence showing the interpretation put by the parties themselves on such alleged contract.

Mr. CHANDLER: I move to strike out this last so-called objection on the ground that it is mere argument.

109 A. I don't know.

X Q. Now, Mr. Sommers, I believe you stated in your direct examination that your capital stock amounted to 7,500,000 dollars, so far as the same was authorized; and that you have issued only 4,500,000, so that you still have 3,000,000 of unsold stock on hand; why don't you sell that stock, if you need some money and pay your taxes?

A. I cannot answer that.

X Q. Do you know of any officer of your company that can answer it?

Mr. CHANDLER: I submit that this is not a fair question to ask, whether the witness knows of any officer that will answer the question, no witness will swear to that; that's not a fair question and I object to it.

A. I cannot answer that.

X Q. And you have also issued bonds for seven and a half million dollars upon which you are paying interest?

A. Yes, sir.

X Q. Well, suppose you had not issued those bonds, do you think you would have enough money left to pay your taxes?

Mr. CHANDLER: I object to the question as calling for no fact and as a question from the very nature of which it shows that it cannot be answered by this witness.

Mr. WOERNER: For the reasons stated by Mr. Chandler I will withdraw the question.

X Q. Most of the cars of the Suburban System run down town don't they?

A. Let me ask, City or County; or City and County, do you want it answered?

X Q. Only those that are in the city?

A. Yes, most of those run down town.

X Q. Both of these roads are operating cars within the City of St. Louis, do they not?

A. Yes, sir.

X Q. I believe that's all.

110 Redirect examination.

By Mr. CHANDLER:

R. D. Q. What's the distance from Grand avenue, Mr. Sommers, to the eastern terminus of the road, of both systems?

A. From Grand avenue—east?

R. D. Q. I am not asking for the trackage, but for the distance between Grand avenue, the former boundary of the city, and the eastern terminus of your line?

A. A little over three miles.

R. D. Q. Now these outside lines spoken of feed the inside lines, don't they?

A. Yes, sir.

R. D. Q. I believe that's all.

(Signed) EDGAR P. SOMMERS.

Subscribed and sworn to before me this 23rd day of November A. D., 1905.

(Signed) JAMES R. GRAY, *Examiner.*

Stipulation.

It is hereby admitted by the defendant, subject to objection on account of the competency and materiality and relevancy of said admission as testimony, that the records of the License Collector's Office of the City of St. Louis show that the number of omnibuses, hacks and other like vehicles engaged in carrying passengers for hire in the City of St. Louis is about five hundred, many of whom are doing business under said licenses. Counsel for the Defendants objects to the introduction of said testimony for the reason that it is incompetent, immaterial and irrelevant and has no connection with

any issue in this case, the licensing of said vehicles being a separate and independent thing from the licensing of street cars.

J. S. WALSH, JR., a witness on behalf of the Complainants, after being duly sworn, testified as follows:

111 Direct examination.

By Mr. CHANDLER:

Q. Mr. Walsh, state your full name, please?
A. J. S. Walsh, Jr.
Q. Have you any official or personal relation with either of the complainants in these cases, the St. Louis and Suburban Ry. Co., or the St. Louis and Meramec River Ry. Company?
A. I am Vice-President and General Manager of the St. Louis and Suburban Railway Company.
Q. You have had your attention called to the exaction by the City of St. Louis of one mill tax on every revenue passenger carried by the Suburban System?

Mr. WOERNER: I object to the question because it does not state a fact; there is no exaction of one mill on every passenger carried; the tax is on the car, the amount of which tax is only ascertained by being fixed at the rate of one mill for each passenger carried on the car.

A. Yes, sir.
Q. Has that exaction been paid?
A. No, sir.
Q. Why not?
A. We consider the tax illegal and unjust.

Mr. WOERNER: I move that the answer of the witness be stricken out as being pure opinion, not relating to any fact or tending to establish any fact; and for the further reason that whether the witness considers it to be legal or illegal and unjust, or the officers of these companies think so, is a matter utterly immaterial so far as the validity of this Ordinance is concerned.

Q. Do you know whether the Suburban System was developed under the conviction of the officers of the Suburban System that the
112 right to charge five cents for every adult passenger carried and the right to charge two and a half cents for every child carried was permanent and inviolable?

Mr. WOERNER: I object to the question on the ground that the conviction of the officers of these companies and the ideas upon which they proceeded in the so-called development of their road are utterly immaterial in this case and throw no light on any issue involved; and can in no way, shape, form or manner bind the City of St. Louis or affect its right to pass the Ordinance in question.

A. It's a fact that we are bound by the Ordinances to charge a fare not exceeding five cents within the city limits, and for children

under the age of twelve a fare not exceeding two and a half cents—we are bound strictly by ordinances to do that.

Q. I don't think that answers my question.

Mr. WOERNER: I move to strike out the answer of the witness because if such is a fact the ordinances mentioned can only be evidenced by writing and cannot be gone into by verbal statements.

Q. Repeat the question to the witness. (Question read as above.)

A. We have considered it that we have no right to charge more than five cents for adults and two and a half cents for children.

Mr. WOERNER: I move that the answer of the witness be stricken out for the reason that it doesn't make any difference what they consider themselves bound by, neither do their opinions affect any question of law in this case.

Q. Mr. Walsh, what's the distance from the eastern terminus of the Narrow Gauge Road as it was before the City Charter was adopted, and the present western boundary of the city?

A. About four and a half miles.

113 Q. State which railroad was the first—which railroad composing a part of the Suburban System was the first to be constructed is the question?

A. The Narrow Gauge.

Q. When constructed, was the Narrow Gauge wholly outside the City of St. Louis?

A. The road itself was; I am not positive about the eastern terminals; there might have been a few feet, say a hundred feet of track within the city.

Q. And when the Scheme and Charter was adopted in 1876 the boundaries of the city, the western boundary of the city was moved further west, wasn't it?

Mr. WOERNER: I object on the ground that the Scheme and Charter will show that.

A. Yes, sir.

Q. What I want to get at is the length of this Narrow Gauge Road that was brought into the city by the adoption of this Scheme and Charter?

A. From one extension to the other extension of the limits it finally reached a distance of four and a half miles.

Q. How far is it from Grand avenue to the western boundary of the city now?

A. By our rails? About four and a half miles.

Q. Now the Narrow Gauge Railroad was organized under the Steam Railroad Act?

A. Yes, sir.

Q. And was in existence at the time of the adoption of the Scheme and Charter, that is prior to 1876, wasn't it?

A. It was constructed and operated in '76; the charter I believe was granted in '73, I am not positive as to the date.

Mr. WOERNER: I move to strike out the answer as incompetent,

the only evidence showing when the Charter was granted being by that instrument itself.

Q. That part of the Narrow Gauge which extends from
114 Grand avenue to the present Western boundary of the City is a part of your system, a part of the Suburban System, is it?

A. That part of the Suburban System now only goes to Vandeventer avenue and from Vendeventer avenue east it was the old Cable and Western.

Q. What was it from Vandeventer avenue to the western boundary of the city?

A. You know the old Narrow Gauge ran some five hundred feet west of Grand avenue on Olive; but we are not operating that part of the road from Olive to Morgan; we have cut off that part of the old road and have connected with the Cable and Western——

Q. At any rate from Grand avenue to the western boundary of the city is covered by a part of the old Narrow Gauge System, isn't it?

A. Yes, sir.

Q. The Narrow Gauge System to which you have succeeded?

A. Yes, sir.

Q. That's all.

No cross examination.

(Signed) J. S. WALSH, JR.

Subscribed and sworn to before me this 23rd day of November, A. D. 1905.

(Signed) JAMES R. GRAY,
Examiner.

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri. In Equity.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

115 It is hereby stipulated and agreed by the parties to this action that the ordinances of the City of St. Louis mentioned in complainant's bill herein and numbered 15954, 15547, 19350, 19393, 19954, 19550, 21087, were enacted by the City of St. Louis, and that each of them applies to complainant's system of railway described in complainant's bill, so far as said system lies within the City of St. Louis and that each and all of them has and have been in all things acted under, obeyed, and kept and performed by complainant, which ordinances are hereto attached, and made part hereof, all of which have been accepted by complainant.

(Signed) JEFFERSON CHANDLER,
Attorney for Complainant.
CHAS. W. BATES,
WM. F. WOERNER,
Attorneys for Defendants.

At this point the further taking of testimony herein was adjourned until Friday morning, November 17th, A. D. 1905, at eleven o'clock A. M.

Eleven o'clock A. M., Friday, November 17th, 1905.

At this time by direction of attorney for complainants herein the further taking of testimony herein on behalf of Complainants is discontinued without day, and these depositions are closed.

116 (15,954.)

An ordinance authorizing the St. Louis and Suburban Railway Company to acquire, construct, operate and maintain a double track passenger railroad on, along and across certain streets, alleys and city blocks, in the City of St. Louis, and to operate its line of railroad by cable or electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto the St. Louis and Suburban Railway Company, its successors and assigns, to acquire all the rights, franchises, immunities, privileges and concessions heretofore granted unto the St. Louis Central and Western Railway Company, its successors and assigns, by Ordinance Number 15,547, of the City of St. Louis, approved March 28th, 1890, except as by this ordinance is otherwise specially provided and excepted and when said St. Louis and Suburban Railway Company shall have acquired the same, it may acquire or construct, and may operate and maintain a double track passenger railroad on, over and along any part or parts thereof, and for the purpose of conveniently connecting the different portions of the tracks which it is authorized by this ordinance to operate, it may in addition, construct, operate and maintain a double track passenger railroad from a point at or near the present terminus of the cable tracks on Morgan street, by the most feasible route over Morgan street, into City Block Number 3754 of the City of St. Louis, to a point on the roadbed or right of way of the steam division of what was formerly the St. Louis Cable and Western Railway Company's railroad, now owned by the St. Louis and Suburban Railway Company, distant not more than six hundred and twenty feet west of the west line of Vandeventer avenue; and may also construct, maintain and operate a double track passenger railroad on Union avenue from the
117 point where the said steam division intersects Union avenue southwardly, on, over and along said Union avenue to a point three hundred feet inside of Forest Park to a point to be selected by the Board of Public Improvements, and may also construct, maintain and operate a double track passenger railroad from the intersection of said Union and Finney avenues, eastwardly on said Finney avenue to the aforesaid roadbed or right of way of said steam division where the same now crosses said Finney ave.; and the said St. Louis and Suburban Railway Company, its successors and assigns,

may also construct, maintain and operate a double track passenger railroad over the whole of the route now occupied by any of the tracks of what was formerly known as the St. Louis Cable and Western Railway Company excepting the spur track to the old depot site near Olive street herein mentioned, and now owned and operated by the St. Louis and Suburban Railway Company; and it may occupy and use with its tracks, roadbed and appurtenances, from its present depot near Vandeventer avenue to the west line of Taylor avenue, in any alley or street now or hereafter established, for public use, three feet contiguous to the north line and seven feet contiguous to the south line of the present roadbed or right of way of the present steam division of said railroad, which is now owned and operated by said St. Louis and Suburban Railway Company; and said St. Louis and Suburban Railway Company may also occupy and use with its tracks, roadbed and appurtenances, between the west line of Taylor avenue and a point where the present line of said railway crosses the City limits in a northwesterly direction, in any alley or street now or hereafter established, five feet contiguous to and on each side of the present roadbed or right of way of said steam division now owned and operated by the St. Louis and Suburban Railway Company, and the use and occupation above described shall be in lieu of the route authorized by Ordinance Number
118 15,547, in Richmond place, near Taylor avenue, westwardly through Richmond place, and intersecting and crossing the streets and city blocks to King's Highway; thence through Morgan street, to Union avenue, also in lieu of the use of the entire alley on the south side of said roadbed or right of way, as included in the route granted in the foresaid Ordinance Number 15,547; and the said St. Louis and Suburban Railway Company may also construct, maintain and operate all curves, switches, sidings and connections, and may make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its tracks along the route which is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the present gauge of the cable division of said railway, or the gauge established by general ordinance for street railroads in the City of St. Louis; but nothing contained in this ordinance shall be so construed as to give any right to said St. Louis and Suburban Railway Company to operate or change the gauge of the spur track now running from the present depot on Morgan street near Vandeventer avenue to the old depot site near Olive street and Cabanne avenue, it being the intention, as soon as possible, to discontinue the existence of said spur track and the running of trains thereon.

SEC. 2. Said St. Louis and Suburban Railway Company, its successors and assigns, may operate its railroad along the route authorized herein by cable laid under ground, or by electricity, either by the storage battery, the conduit underground, or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient to the use of electricity as a motive power, may be erected and placed either between the tracks of said

railroad or along the curbs of all streets, on, over across or
119 along which said railroad may at any time be operated, under this Ordinance or the aforesaid Ordinance No. 15,547, except as by this ordinance is otherwise specially provided or excepted, and along the line of the right of way as established by this Ordinance between Vandeventer avenue and a point where said railroad crosses the city limits, said poles to be not less than twenty feet above the surface of the streets and alleys, and to be of such form and material and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; but in no case shall the poles be placed between the tracks on any street east of Vandeventer avenue, and said St. Louis and Suburban Railway Company shall have the right to make all needful and convenient changes from time to time by the construction and erection of all needful and convenient curves, trenches, excavations, sewer connections, cable and machinery, poles and wires, in any of the streets or alleys in, along, over or across which its railroad may be constructed, maintained or operated, provided that said work shall be done in accordance with plans approved by said Board of Public Improvements.

But said railway company shall cause the grade of its roadbed and tracks to conform to the grades of the streets now or hereafter established at all points where said railroad crosses any of the streets of the City of St. Louis, and when that part of its line of railroad between its present depot near Vandeventer avenue and its terminus at Sixth and Locust streets shall be operated by electric power, said company shall cause the present slots between the rails of its tracks to be closed, and the surface of the streets between the rails of said tracks to be put into condition satisfactory to the Board of Public Improvements.

SEC. 3. The St. Louis and Suburban Railway Company
120 shall commence the work of construction within six months after the approval of this ordinance, and have the entire work completed, and have the railroad authorized herein in full operation in the transportation of passengers in cars propelled in continuous passages by cable or electric power, within two years from the approval of this ordinance, and thereafter no cars shall be propelled on any part of its lines of railroad as herein authorized by steam locomotives. And from and after the expiration of the two years aforesaid, the St. Louis and Suburban Railway Company, its successors and assigns, shall run passenger cars propelled by cable or electricity over its lines of railroad every day in the year during the life of this franchise as follows: On its main line from Sixth and Locust streets to Well's station from six o'clock a. m. to eight o'clock a. m., at intervals not exceeding ten minutes; and from eight o'clock a. m. to ten o'clock a. m., at intervals not exceeding five minutes; and from ten o'clock a. m. to four o'clock p. m., at intervals not exceeding ten minutes; and from four o'clock p. m. to seven o'clock p. m., at intervals not exceeding five minutes; and from seven o'clock p. m., to ten o'clock p. m., at intervals not exceeding ten minutes, and from ten o'clock p. m., until twelve o'clock

midnight, at intervals not exceeding fifteen minutes; and it shall also run a special train starting at Well's Station at five-thirty a. m., running eastwardly to Sixth and Locust streets; and on the branch line running to Forest Park, it shall run its cars at intervals not exceeding ten minutes from six o'clock a. m. to twelve o'clock midnight. East of Grand avenue it shall not run its cars at a speed greater than ten miles an hour, nor greater than twenty miles an hour west of Grand avenue on its main line, nor greater than fifteen miles an hour on its branch road to Forest Park. The failure of the said Railway Company, its successors or assigns, to have its lines of railroad authorized herein in full operation within two
121 years from the approval of this ordinance as above required, or the failure to maintain it in effective operation, and to run its cars by cable or electricity, or the attempt by said Railroad Company, its successors or assigns, to propel cars on any part of said railroad by steam locomotives after the lapse of the two years aforesaid, shall *ipso facto* work immediately a complete and absolute revocation of this Ordinance and forfeiture of all the privileges, rights and franchises granted in this Ordinance the same as if it had never been passed. The temporary suspension or the temporary use of horse power in drawing cars in the event of the derangement of the machinery or other extraordinary emergency shall not be deemed a violation of this Ordinance. The fare from any point or station on the main line or branch of this railway to any point on its lines as herein authorized to be constructed and operated shall not exceed two and one half cents for persons under twelve years of age, and not exceed five cents for persons over twelve years of age for a continuous passage one way.

SEC. 4. Within sixty days after this ordinance shall become a law said St. Louis and Suburban Railway Company, its successors and assigns, shall file with the City Register its written acceptance thereof, and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties to be approved by the Mayor and Council, conditioned that said Company shall observe all the terms and conditions of this Ordinance, and all general Ordinances now in force or that may hereafter be passed in reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs, by reason of the construction, operation or maintenances of said railroad, which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond shall be demanded and given and ap-
122 proved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be cancelled and returned to the makers and the new bond filed with the Register of the city.

SEC. 5. The bond required by this ordinance, as aforesaid, shall be in lieu of any bonds required by said Ordinance Number 15,547, or by the Ordinances Number 12,852, and Number 13,282, but the said St. Louis and Suburban Railway Company shall construct, operate and maintain its railroad subject to the obligations and regulations, and with all the rights, privileges, immunities, and ex-

emptions in said Ordinance Number 15,547 contained, except as by this Ordinance is otherwise specially provided, or excepted, and not inconsistent with the provisions of this Ordinance and free from all penalties, burdens and obligations, except such as are imposed by this Ordinance and by the aforesaid Ordinance Number 15,547, provided that when said St. Louis and Suburban Railway Company, its successors and assigns, shall have acquired the rights, franchises, privileges and immunities granted to said St. Louis Central and Western Railway Company by said Ordinance Number 15,547, the said St. Louis and Suburban Railway Company, its successors and assigns, shall have the option to construct maintain and operate its tracks, on all or any portion of the route described in said Ordinance Number 15,547, excepting the right to occupy and use that part of the route authorized in said Ordinance Number 15,547 on Richmond place and Morgan street as herein provided in Section One, also excepting the right to use the alley on the south side of the roadbed of the narrow gauge or steam division of the former St. Louis, Cable and Western Railway Company, between its depot near Vandeventer avenue, Morgan street and Taylor avenue, as provided in Ordinance Number 15,547, excepting the seven feet thereof
123 authorized in Section One of this Ordinance, which seven feet may be used by this company as therein provided. Nothing in this section shall be so construed as to relieve the St. Louis and Suburban Railway Company from any obligation in regard to the amount of money to be paid to the City of St. Louis under the provisions of Ordinance Number 15,547.

SEC. 6. The right to use the three feet contiguous to the north line and seven feet contiguous to the south line of the present roadbed or right of way of said steam division of said railroad from its present depot near Vandeventer avenue to the west line of Taylor avenue, and also the right to use five feet contiguous to and on each side of the present roadbed or right of way of said steam division of said railroad between the west line of Taylor avenue and a point where said railroad crosses the westerly City Limits in any alley or street now or hereafter established, as granted by this Ordinance, shall cease and terminate whenever said St. Louis and Suburban Railway Company, its successors and assigns, shall cease to use, as motive power for the moving of its cars, electricity or cable power, as in this ordinance is authorized and required.

SEC. 7. No freight depot, coal yard, lumber yard, stock or cattle yard shall be established, erected or maintained by this company, its successors or assigns, anywhere along the lines of its railroad in the City of St. Louis, nor shall any freight or cattle cars be run on any part of its railroad in the City of St. Louis, nor shall any cattle, stock or freight be carried thereon after the road is ready for operation by cable or electricity, and in no event after the lapse of two years from the approval of this ordinance, excepting freight required for the construction, maintenance and operation of said railroad, and excepting family supplies (excluding coal), for the
124 use of persons living on or near the line of said railway, which may be carried on said road west of Vandeventer avenue,

but not east of said avenue. Any violation of the provisions of this section by said company, its successors or assigns, shall work a forfeiture of all the rights, franchises and privileges in this ordinance granted.

SEC. 8. The said railway company shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail in perfect repair as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street over which it runs or crosses, and between the rails of the same, or better material, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the repairing or reconstruction of said street; and provided, further, that at all curves, switches and railway crossings, the space between the rails, and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

SEC. 9. Said railway company hereby agreeing to construct a depot building and waiting-room to be located at the terminus of its tracks in Forest Park in accordance with the following conditions and provisions, to-wit: Said railway company, its successors and assigns, shall cause plans and specifications to be prepared for said depot building and waiting room by a skillful architect or architects, and to cost not less than twenty-five thousand dollars, which said plans and specifications shall be submitted to and shall be subject to the approval of the Board of Public Improvements, and when so approved said company, its successors or assigns, shall pro-
125 cure bids for the construction of said building and waiting room from at least three responsible parties, which said bids shall be submitted by said company, to said Board of Public Improvements, and said Board shall accept the lowest of said bids; but no bids shall be accepted by said Board unless the same shall amount to at least the sum of twenty-five thousand dollars, and said company, its successors or assigns, shall thereupon cause said depot building and waiting room to be constructed at its own cost and expense in accordance with said plans and specifications, and according to the terms of the contract so awarded by said Board of Public Improvements, and the construction of said depot building and waiting room shall be under the supervision of said Board of Public Improvements. Said depot building, when completed, shall become the property of the City of St. Louis, and be under the regulations of the Park Commisioners, subject, however, to the use of the said Railroad Company, as a passenger depot.

SEC. 10. This Ordinance and all the rights, privileges and franchises hereby granted shall continue in force for the term of forty-five years from the date of its approval.

Approved February 6, 1891.

[15,547.]

ordinance authorizing the St. Louis Central and Western Railway Company to construct, operate and maintain a double track passenger railway on, along and across certain streets, alleys and city blocks in the City of St. Louis.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority are hereby given and granted unto George L. Peabody, Henry E. Warner, George W. Parker, Joseph C. George, George A. Baker, Edward R. Feuerborn, Walter J. Blakey, H. C. Buhoup and Henry L. Edmunds, when incorporated under the laws of the State of Missouri, and in the name of the St. Louis Central and Western Railway Company, and unto said company, its successors and assigns, to lay down, construct, or acquire and to operate and maintain a double track passenger railroad, on, over and along the route prescribed in section 2 of this ordinance, and over and across all streets and alleys, city blocks and other places crossed or intersected by said route, together with all necessary curves, switches and sidings.

SEC. 2. The railroad authorized by section 1 of this ordinance shall begin on Locust street, at its intersection with Sixth street, and run thence west with double track on Locust street on the present tracks or roadbed of the St. Louis Cable and Western Railway Company to Thirteenth street, thence north on Thirteenth street to Lucas avenue, thence west on Lucas avenue to Fourteenth street, thence north on Fourteenth street to Wash street, thence west on Wash street to its intersection with Easton avenue, thence over and across Easton avenue into Franklin avenue at its junction with Whittingwell avenue, thence west on Franklin avenue to a point about one hundred and fifty feet east of Grand avenue, thence curving through city block 1,063 and across Grand avenue into Morgan street on the west side of Grand avenue, thence west on Morgan street to the present terminus of the cable division of the St. Louis Cable and Western Railway Company, thence curving northwestwardly through city block 3,754 to the alley on the south side of the roadbed of the narrow gauge division of the St. Louis Cable and Western Railway Company; thence westwardly through said alley and over and across all intervening streets, highways and private property in a line with said alley to Taylor avenue; thence over and across Taylor avenue into city block number 3,761, and thence by the most practicable route into Richmond place, at a point about three hundred feet west of Taylor avenue; thence westwardly on Richmond place to Walton avenue; thence over and across Walton avenue through city block number 3,762, over and across Cleveland avenue, through city block number 3,763, over and across Whitby avenue, through city block number 3764 over and across Aubert avenue, through city block number 3,765, over and across Kingshighway into Morgan street on the west side of Kingshighway, thence westwardly on Morgan street to Union avenue, and thence south on

Union avenue to the railroad track of the Wabash Western Railway Company, which is at or near the north line of Forest Park; and if said grantee, its successors or assigns, shall at any time succeed in obtaining the right of way over the private lands west of Union avenue and adjacent to Forest Park, its tracks may be deflected by easy curving out of Union avenue and into such lands, and *that in* event its tracks and railroad may be projected, extended, constructed and operated over the track or tracks of the Wabash Western Railway Company and over all intersecting streets and alleys on an elevated structure, into Forest Park at a point west of the superintendent's house and north of the most northerly driveway, so that no roadway in the park will be crossed or obstructed by
128 them; such terminal point to be determined by the Board of Public Improvements, the elevations of such elevated structure over all intersected streets and alleys, if any, and the plan by which the deflection from Union avenue and into the parks is to be made, as well as the point of deflection to be submitted to and approved by the Board of Public Improvements before the work is done, and when approved by the Board of Public Improvements, the work shall be done in strict compliance with the plan so approved; provided further, that the St. Louis Central and Western Railway Company, its successors and assigns, may maintain the wheel in Sixth street, on which the cable of the railroad now in Locust street runs, where it is now placed; but the most eastern switch shall be taken up and thrown far enough west to enable cars to be switched thereon from one track to another without projecting beyond, or east of the west building line of Sixth street, and said railway company agree that under no circumstances shall its cars at any time project east of the building line on the west side of said Sixth street.

SEC. 3. The power to be used in the propulsion of the cars of said St. Louis Central and Western Railway Company, its successors and assigns, shall be cable underground or electricity. The electricity, if adopted, to be carried either by storage battery or by conduit under ground or at the election of the company, through overhead wires by the overhead wire system, on ornamental iron poles, or such other as may be permitted by the Board of Public Improvements. The poles to be placed either at the curbstone along the route on either side, or between the tracks of the railway company, as may be determined by the Board of Public Improvements, either for the whole line or for parts thereof, as may in the judgment of the Board be most desirable in the interest of the public; but until author-
129 ized by future legislation electricity shall not be used on that part of the line of said railroad east of 22nd street. For the purpose of changing from grip to motor cars, and vice versa, at this point, said company its successors and assigns, are authorized to lay down, construct and operate and maintain all necessary and convenient switches in the intersecting street at its power house, both north and south of the main line, not, however, to exceed one hundred and fifty feet in length either way. In case of emergency, horses may be used for motive power.

SEC. 4. If in the construction of this railroad under the authority of this ordinance, any water pipe or sewer is interfered with, so as to require the same to be relaid or repaired, all such work shall be done by the proper city department, and the total cost or expense thereof shall be paid by said railway company, its successors or assigns. If any public water pipe or sewer along which said railroad so to be constructed and operated shall, in consequence thereof, at any time be injured or damaged by reason of the construction of said railway thereon, make the repairing or reconstruction of such water pipe or sewer necessary in the opinion of the proper authority of the City of St. Louis, said railway company, its successors or assigns, shall make such repairs at its own cost and expense, and in order to insure a faithful compliance with the provisions of this ordinance relative to the repairing of streets, tracks, water and sewer pipes, the said railway company, its successors or assigns, shall pay into the City Treasury the sum of five hundred dollars within thirty days after the acceptance of this ordinance, as a special fund for the purpose of defraying the cost of such repairs as the said railway company, its successors or assigns, may be liable to make, or which, in the opinion of the Street Commissioner, shall be necessary to be made. Whenever there shall be any deficit in the deposit above mentioned, in consequence of the part or whole of said deposit having been used for repairs by the Street Commissioner, the President of the Board of Public Improvements shall notify said company in writing, its successors or assigns, that such deficiency exists, and a failure to make such deficiency good by said railway company, its successors or assigns, within ten days after said notice shall have been given, shall be deemed a misdemeanor, and upon conviction thereof before any Police Justice of the City of St. Louis said company shall be fined not more than twenty-five dollars for each day such deficiency shall continue.

SEC. 5. Said railroad and its appurtenances shall be maintained in good order by said company, and said railroad, between Sixth and Locust streets and Forest Park, shall be operated between the hours of five o'clock a. m. and twelve o'clock midnight, and the cars shall be run thereon between the hours of five o'clock a. m. and nine o'clock a. m. at intervals not greater than five minutes, and between nine o'clock a. m. and five o'clock p. m. at intervals not greater than seven minutes, and between five o'clock p. m. and seven o'clock p. m. at intervals not greater than five minutes, and between seven o'clock p. m. and twelve o'clock midnight at intervals not greater than seven minutes. Any failure on the part of said company, its successors or assigns, to operate its road and run its cars as herein provided, shall be deemed a misdemeanor, and upon conviction thereof said company shall be fined for each offense, not more than one hundred dollars, and said company shall not run its cars at a greater rate of speed than eight miles an hour between Sixth street and Channing avenue, nor greater than fifteen miles per hour between Channing avenue and its western terminus at Forest Park, and shall not charge for a single continuous passage one way, over

its said line between its terminus at Sixth and Locust street
131 and its terminus at Forest Park, more than the rate author
ized by this ordinance, which shall be five cents for each rid
one way for an adult, or every person over the age of twelve years
and two and a half cents for a child under twelve years of age
Tickets for the use of children under twelve years of age shall b
sold in lots of not less than ten for twenty-five cents.

SEC. 6. Within sixty days after this ordinance shall become a law
said company shall file with the City Register its written acceptanc
of the provisions hereof and its penal bond to the City of St. Louis i
the sum of ten thousand dollars, with two or more sureties to be ap
proved by the Mayor and Council, conditioned that said compan
shall observe all the terms and conditions of this ordinance, an
shall hold the City of St. Louis harmless from the payment of al
damages and costs by reason of the construction, operation or main
tenance of said railroad, which bond shall be renewed from time t
time whenever demanded by the Mayor, and whenever a new bon
shall be demanded and given and approved by the Mayor and Coun
cil, it shall supersede the old bond, and thereupon the old bond shal
be cancelled and returned to the makers and the new bond file
with the Register of the city. Within six months from the date o
such acceptance said St. Louis Central and Western Railway Com
pany, its successors and assigns, shall in good faith begin the con
struction of said line of railroad, and within two years from the dat
of such acceptance, shall have its cars in operation from its terminu
at Sixth and Locust streets to the terminus at Forest Park, and th
terms of this franchise shall then exist in favor of said railway com
pany, its successors or assigns, for a period of forty-five years. An
unless said company shall commence and complete its road to it
western terminus at or near Forest Park, as herein provided, in th
manner and at the time by this ordinance provided the right
132 and privileges hereby granted by this ordinance shall ceas
and become void.

SEC. 7. Before constructing the railroad herein provided for, o
any part thereof, the said railway company, its successors or assigns
shall file in the office of the Board of Public Improvements of th
City of St. Louis, an accurate plan of the location of its tracks an
a profile of the same, and should the Board of Public Improvement
direct any change in the plan and profile, not inconsistent with th
general provisions of this ordinance, such change or changes shal
be made by said company, its successors or assigns, and after sai
plans and profile have been agreed upon, the work of constructio
shall be begun.

The laying of tracks along or across streets and alleys shall b
done so as not to unnecessarily interrupt or interfere with trave
thereon, and shall be done under the direction and to the satisfactio
of the Board of Public Improvements. The said railway compan
shall keep the streets between the rails and between the tracks, an
to the extent of twelve inches outside of each rail, in perfect repa
as nearly on a level with such rails as practicable, and that portio

outside the rails and between the tracks shall be of the same material as the street itself, and between the rails of the same or better material, to the satisfaction of the Street Commissioner, and said spaces shall be repaved and reconstructed as often and whenever the city shall by ordinance direct the repairing or reconstruction of said street; and provided further, that at all curves, switches and railway crossings, the space between the tracks and between the rails and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner. Said railway company shall construct its tracks with flat steel rails of pattern described and provided by general ordinance of the City of St. Louis.

133 SEC. 8. In consideration of the rights and franchises granted by this ordinance, said St. Louis Central and Western Railway Company, its successors or assigns, shall, beginning three years from the approval of this ordinance, pay to the Treasurer of the City of St. Louis, for account of the city, on the last day of December of each year, for the term of five years, the sum of one thousand dollars, and for the further period of five years the sum of two thousand dollars per annum, and from that time until the expiration of the rights and franchises granted by this ordinance, the sum of four thousand dollars per annum.

SEC. 9. If at any time the St. Louis Central and Western Railway Company its successors and assigns, shall acquire the right of way, roadbed, tracks and franchises of the St. Louis Cable and Western Railway, or any part thereof, then and in that event, such right or rights of way, railroad and franchises so acquired may be operated in connection with the railroad authorized by this ordinance, and may be maintained and operated by said St. Louis Central & Western Railway Company, its successors and assigns, free from the penalties, burdens and obligations imposed thereon by ordinances of the City of St. Louis, numbered twelve thousand eight hundred and fifty-two and thirteen thousand two hundred and eighty-two; and said St. Louis Central and Western Railway Company, its successors and assigns, may lay down and maintain all necessary connections by switches and otherwise between said railroad and right of way so to be acquired, and the railroad authorized by this ordinance.

Approved March 28, 1890.

134 [19,350.]

An ordinance authorizing the St. Louis and Suburban Railway C
pany to extend its tracks from its present terminus on Lo
street, near Sixth street, and construct a railroad over, along
across certain streets, in the City of St. Louis, and to operate
cars over and upon the tracks of certain other railroads, and
operate the same by electric power, and also authorizing the
Louis and Meramec River Railroad Company to join with
St. Louis and Suburban Railway Company in said construct
and to maintain and operate its cars over the same tracks
route with electric power, and authorizing said companies to o
ate ambulance and funeral cars and carry household supplies,
prescribing conditions for the rights hereby granted.

Be it ordained by the Municipal Assembly of the City of St. Lo
as follows:

SECTION 1. The St. Louis and Suburban Railway Company
the St. Louis and Meramec River Railroad Company, their suc
sors and assigns, are hereby authorized and empowered to extend
tracks of the St. Louis and Suburban Railway Company and
struct, operate and maintain their respective lines of railway as
lows: Beginning at a point in the south track of the St. Louis
Suburban Railway Company on Locust street, near the intersec
of Sixth street, thence eastwardly with a single track curve on Lo
street, connecting with the track of the Union Depot Railway C
pany on Sixth street; thence southwardly, over, along and upon
track of the Union Depot Railway Company on Sixth street to a p
where the tracks of the Southern Electric Railroad Company con
with the tracks of said Union Depot Railway Company on Si
street, near the north side of Pine street; thence south on and al
said Sixth street, over and upon the track of the Southern Ele
Railroad Company to a point near Elm street with the right to
all intervening streets and railroad tracks; thence eastwardly wi
single track curve connecting with the south track of the St. L
Railroad Company on Elm street; thence east on Elm street over
upon the south track of said St. Louis Railroad Compan
135 its terminus on Elm street near Broadway; thence east
Elm street with a single track over and across the tracks of
St. Louis Railroad Company on Broadway to the east line of Br
way; thence east on Elm street to the west line of Fourth street
a double track which may be used for such switching and stan
of cars as may be incidental and necessary to the regular busine
said companies; thence with a single curve track to connect
south track on Elm street with the east track of the People's Rail
Company on Fourth street; thence north over and upon said
track of the People's Railway Company to Locust street; thence
with a single curve track on Fourth and Locust streets and across
west track of said People's Railway Company to a connection
the north track of the Cass Avenue and Fair Grounds Railway
pany on Locust street; thence west over and upon said north t

and across the tracks of the St. Louis Railroad Company on Broadway to a point near Sixth street; thence west and across the tracks of the Cass Avenue and Fair Grounds Railway Company and of the Union Depot Railway Company on Sixth street to a connection with the north track of said St. Louis and Suburban Railway Company on Locust street near Sixth street; provided, however, that said companies may build, with proper curve connections with their track provided for above on Elm street and with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street near Fourth street, a temporary single track on Fourth street between Elm and Locust streets, east of and as near as practicable to the east track of the People's Railway Company, the east rail of said temporary track to be distant at least ten feet from the east curb of the street; and maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Com-
136 pany have been so reconstructed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company upon the east track thereof as provided above in this section, between Elm and Locust streets; said companies shall be required, and they hereby agree, to remove such temporary track and restore the street to its former condition, to the satisfaction of the Street Commissioner, whenever the tracks of the People's Railway Company are reconstructed as above provided, and said companies are able to begin the operation of their cars on the east track thereof.

If said companies fail to remove such temporary track when they are able to begin the operation of their cars upon the east track of the People's Railway Company, after the tracks of said last named company shall have been reconstructed as above provided, such failure shall work a forfeiture of all the rights and privileges granted by this ordinance and shall constitute a breach of the bond given under the provisions of this ordinance, and the city shall remove such temporary track and restore the street at the cost of said companies, such cost to be recovered by the city against the bond given under the provisions of this ordinance.

SEC. 2. Said lines of railroad hereby authorized shall be operated by electric power, either by storage battery conduits underground, the overhead wire system, through overhead and supplementary ground circuits, or any other electric system. Said companies may erect iron poles to carry overhead wires. The feed wire shall not be less than twenty feet above the surface of the street, said poles to be placed along the curbs of streets at such distances apart as may be deemed necessary for the safe and proper operations of said
137 railroads, and the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company may also construct, maintain and operate all curves, turnouts, switches, sidings, crossings, crossovers and connections, make all excavations which are reasonably necessary and convenient for the operation of their tracks along the route which they are by this ordinance authorized to use and occupy. The general plan,

character and location of the poles shall be submitted to and approved by the Board of Public Improvements.

SEC. 3. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, may run their cars over said route as hereby authorized, at a rate of speed not to exceed ten miles per hour.

SEC. 4. Whenever any of the streets through which the tracks of said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, authorized by this ordinance to be reconstructed, are laid, shall be repaired or reconstructed, said companies shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed to the satisfaction of the Street Commissioner, and said companies shall cause the grade of the roadbed and tracks authorized by this ordinance to be constructed to conform to the grades now or hereafter established of the streets in which said tracks are laid, and at all points where said railroads cross any of the streets of the City of St. Louis.

SEC. 5. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, shall, within sixty days after the approval
138 of this ordinance, file with the City Register their joint written acceptance of all the provisions hereof; and also their joint bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said companies, and each of them, jointly and severally, shall observe all the terms and conditions of this ordinance and all general ordinances of the City of St. Louis now in force, or that may hereafter be enacted in reference to street railways, and that they shall hold the City of St. Louis harmless from the payment of all or any damages and costs which may be established against the City of St. Louis by reason or on account of the construction, operation and maintenance of said railroads, or either of them, or by reason of the failure of said railway companies, or either of them, to comply with all the terms and conditions of this ordinance; which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond is demanded by the Mayor, and given by said railroad companies, and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers, and the new bond filed with the Register of the city.

SEC. 6. Said companies may run United States mail, ambulance and funeral cars, and cars for the transportation of family goods and supplies (excepting coal) over the tracks hereby authorized.

SEC. 7. In consideration of the rights and privileges granted by this ordinance, said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, their successors or assigns, each year, until the expiration of the rights and privileges granted by this ordinance, pay to the Treasurer of the

City of St. Louis, for account of said city, the sum of three
139 thousand five hundred dollars per annum, on the thirty-first of December of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

SEC. 8. The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

SEC. 9. This ordinance shall continue in force until February sixth, nineteen hundred thirty-six.

Approved April 5, 1898.

[19,393.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks running north on Union avenue, and to construct, maintain and operate its double track electric railroad along and across certain other streets and highways in the City of St. Louis, and to operate its said extension railroad by electric power, and to relinquish its rights to operate a certain portion of its said line or railway already constructed and operated on said Union avenue, and in Forest Park, under Ordinance number fifteen thousand nine hundred and fifty-four of the City of St. Louis, and to repeal section nine of said last named ordinance; also to operate funeral and ambulance cars, and to carry household supplies, and prescribing conditions therefor.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company, its lessees, successors and assigns, is hereby authorized and empowered to extend its double tracks running north and south on Union
140 avenue in said city, and to construct, maintain and operate a double track railroad, together with all necessary turnouts, switches, crossings, cross-overs, connections and loops, over, along and upon the streets, alleys and public places on the following route, viz: From a point where the railway or railroad of said St. Louis and Suburban Railway Company intersects Union avenue, being the most northerly point of its tracks, running and authorized to be constructed and operated north and south on said Union avenue, under ordinance number fifteen thousand nine hundred and fifty-four of said City of St. Louis; thence northwardly, with a double track, along and over said Union avenue, and across and along all intervening streets, alleys and public places to the Natural Bridge Road, thence over private property, or over and along Union avenue, whenever opened, to Bircher street; thence eastwardly on, over and along said Bircher street, and across and along all intervening streets, alleys and public places to Bernays avenue; thence northwardly on, over and along said Bernays avenue, and across and along all intervening streets, alleys and public places to Florissant avenue in said city; with the right to make all excavations, embankments, bridges and culverts which are reasonably necessary and convenient for the operation of its said tracks along said route; Also to con-

struct, maintain and operate double tracks on Maple avenue from the western city limits east on Maple avenue to a connection with the present tracks of said company at or near the point where said tracks cross Maple avenue, at or near the intersection of Maple and Hodiamont avenue.

SECTION 2. Said extension of said line of railroad, as herein authorized, in connection with and as part of its present line of road operated under said Ordinance number fifteen thousand nine hundred and fifty-four, shall be operated by electric power, said
141 operation, at the option of said St. Louis and Suburban Railway Company, its successors and assigns, to be by storage battery on the cars, or by wire or wires placed in an underground conduit or conduits or by an overhead wire or wires supported by iron or steel poles, or of such other material as may be approved by the Board of Public Improvements of said city, under whose supervision all of said work is to be done. Said poles may be erected and placed either between the tracks of said railroad or along the curbs of all the streets on, over, across or along which said railroad may at any time be operated under this ordinance. The wires on said poles shall not be less than twenty feet above the surface of the street. The general plan, character and location of the poles and overhead wires will be submitted to and approved by the Board of Public Improvements.

Said railway company, its successors or assigns, shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the streets over which it constructs its said extension.

SECTION 3. The said St. Louis and Suburban Railway Company shall commence the work of construction of said extension within six months after the approval of this ordinance, and complete the same to the Natural Bridge Road within two years from said approval, and the balance of said road shall be completed within two years from and after the establishment of grade by the said City of St. Louis on the whole of said route and from and after the expiration of said two years last named, the said railway company, its successors and assigns, shall run passenger cars over its said extension of line of railway every day in the year during the life of this franchise, as follows: At intervals not exceeding ten minutes from six o'clock a. m. to midnight. Said railway company
142 shall not run its cars at a speed greater than fifteen miles an hour on said extension of its route. The fare from any point or station on said extension of said railway to any point on the line of said extension, or to any point on its main or branch lines operated under the authority given by Ordinance number fifteen thousand nine hundred and fifty-four or to any point on the St. Louis and Meramec River Railroad Company's line of railroad within the city limits, or from any point on said main line and branches operated under said Ordinance number fifteen thousand nine hundred and fifty-four, or from any point on said St. Louis and Meramec River Railroad Company's line within the city limits to any point on said extension, shall not exceed two and one-half cents for

persons under twelve years of age and shall not exceed five cents for persons over twelve years of age, for a continuous passage one way. And the said St. Louis and Suburban Railway Company shall issue to passengers who have paid regular fare, and who may request the same, the necessary transfer ticket, or tickets, entitling such passenger to immediate continued passage from the point where the transfer is made, over said extension line, or over said main line and its branches, as the case may be.

SECTION 4. Within sixty days after this ordinance shall become a law, said St. Louis and Suburban Railway Company, its successors and assigns, shall file with the City Register its written acceptance thereof and its penal bond to the City of St. Louis in the sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said company will observe all the terms and conditions of this ordinance, and all general ordinances now in force, or that hereafter may be passed with reference to street railways, and shall hold the City of St. Louis harmless from the payment of all damages and costs which may be established
143 against the said city by reason of the construction, operation and maintenance of said railroad, which bond shall be renewed from time to time, whenever demanded by the said Mayor, and whenever a new bond shall be demanded, given and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers and a new bond filed with the Register of said city.

SECTION 5. Said railway company, its successors or assigns, shall not allow any freight cars to be run over its lines, including this extension, excepting for the transportation of family goods and supplies (excluding coal), and for the use of persons living on or near the lines of said railroad, said company may run cars to carry such family goods and supplies, also United States mail, ambulance and funeral cars, from any point on this extension to and from its station about five hundred feet west of Vandeventer avenue, at a point where it leaves Morgan street to connect with its private right-of-way.

SECTION 6. The said railway company shall keep the streets between the rails and between the tracks and to the extent of twelve inches outside of each rail, in perfect repair, as nearly on a level with such rails as practicable, and that portion outside the rails and between the tracks shall be of the same material as the street over which it runs or crosses, and between the rails, of the same or better material, to the satisfaction of the Street Commissioner; and said spaces shall be repaved and reconstructed as often and whenever the city shall by an ordinance direct the repairing or reconstruction of said street; and provided, that all curves, switches and railway crossings, space between the rails and one foot outside of the rails, shall be paved with granite and maintained and repaired with granite to the satisfaction of the Street Commissioner.

SECTION 7. The said St. Louis and Suburban Railway Com-
144 pany shall relinquish and surrender to said city in part consideration of the rights, privileges and authority herein granted, its authority, license and permission given it by Section one

of Ordinance number fifteen thousand nine hundred and fifty-four, to construct and operate double tracks across the Wabash Railroad Company's tracks on Union avenue, to a point three hundred feet in Forest Park, and the southern terminus of said tracks shall be at a point on said Union avenue in the northern line of the right of way of said Wabash Railroad; and the acceptance of this ordinance, as provided by Section four hereof, shall be sufficient evidence of such relinquishment and release. Said railway company shall remove its tracks from said southern terminus established by this section to its present southern terminus in Forest Park, within ninety days from the approval of this ordinance, and shall restore the street to its former condition. Section nine of said Ordinance number fifteen thousand nine hundred and fifty-four shall be, and is hereby, repealed; such repeal, however, not to take effect until the acceptance of this ordinance, as provided by Section four hereof.

In consideration of the repeal of said Section nine of Ordinance number fifteen thousand nine hundred and fifty-four, and in lieu of the requirements thereof, the said railway company shall be required and hereby agrees to cause to be graded the alleys along its right of way west of Vandeventer avenue, and to build suitable retaining walls if necessary for such alleys east of Sarah street, said walls to be located so as not to interfere with the right of said company to occupy and use said alleys under provision of Section one of Ordinance number fifteen thousand nine hundred and fifty-four. Such improvements to be made according to plans and specifications submitted to and approved by the Board of Public Improvements; pro-
145 vided, however, that the said railway company shall not be required to expend more than twenty-five thousand dollars for such improvements. And said railway company shall also dedicate to public use and open and grade in lot twelve, City Block number three thousand seven hundred and fifty-four, an alley twenty feet wide from Morgan street to the alley which extends along the south side of its right of way.

SECTION 8. All of the provisions of said City Ordinance number fifteen thousand nine hundred and fifty-four, so far as the same are in force and apply to the present line of the St. Louis and Suburban Railway Company, shall continue in force and apply to the entire line of railway, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

SECTION 9. In consideration of the right and franchises granted by this ordinance, said St. Louis and Suburban Railway Company, its successors or assigns, shall, beginning two years from the approval of this ordinance, pay to the Treasurer of the City of St. Louis, for account of the said city, on the last day of December of each year, and for a term of five years, the sum of one thousand dollars, and from that time up to the year nineteen hundred and twenty the sum of two thousand dollars per annum and thereafter until the expiration of the rights and franchises granted by this ordinance, the sum of four thousand dollars per annum.

This ordinance and all the rights privileges and franchises hereby

granted shall continue in force until February sixth, nineteen hundred and thirty-six.

SECTION 10. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this ordinance, shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

SECTION 11. The St. Louis and Suburban Railway Company, in accepting this ordinance, agrees to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force or which may hereafter be enacted and applicable to its entire line of railroad or any part thereof.

Approved June 10, 1898.

146 [19,954.]

An Ordinance to reconstruct alley in city block number eight hundred and ninety-four.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause alley in city block number eight hundred and ninety-four from Eighteenth street to Nineteenth street, and between Market street and Chestnut street, to be reconstructed by taking up and removing the old pavement, preparing ground for the superstructure, laying a roadway pavement of vitrified paving block on a concrete base and making all proper connections and intersections with other streets and alleys.

SECTION 2. The base shall be a bed of hydraulic cement concrete and the paving shall be the best quality of vitrified paving block, laid on a bed of sand.

SECTION 3. The old pavement shall be removed and the ground for the superstructure prepared to a depth of twelve and one-half inches below the intended surface of the roadway. On the roadbed a base of hydraulic cement concrete, six inches deep, shall be laid; on this base there shall be placed a pavement of the best quality of vitrified paving block. The blocks shall not be less than nine inches nor more than twelve inches long; not less than three and one-half inches nor more than four and one-half inches wide; not less than five inches nor more than six inches deep; they shall be set on edge on a bed of clean, coarse sand of sufficient depth to bring the upper surface of the blocks, after they have been well rammed, to the true surface of the pavement. The joints shall be completely filled with grout, composed of one part best Portland Cement to one part of sand.

SECTION 4. The cost of the foregoing work and all proper connections and intersections required shall be charged as a lien upon the adjoining property fronting or bordering on the improvements herein provided for and shall be paid by the owners thereof. When said work is completed the President of the Board of Public Improvements shall compute the cost thereof and levy and assess the

same as special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf of the contractor, bills of such cost and assessment accordingly, as required by law.

Approved February 23, 1900.

147 [19,550.]

An ordinance to partially improve Neosho street between Broadway and Michigan Avenue.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause Neosho street, between Broadway and Michigan avenue, to be partially improved by grading, preparing ground for the superstructure, laying on the roadway a sub-foundation of rough rock, twenty feet wide, and placing thereon a course of macadam, with a binding material and a top dressing of gravel, and making all proper connections and intersections with other streets and alleys.

SEC. 2. The sub-foundation of rough rock and the macadamizing shall be of limestone, the binding material shall be of loam, sand or macadam screenings, and a top dressing of gravel shall be used to cover the surface of the roadway.

SEC. 3. The grading shall be done in accordance with the directions of the Street Commissioner. The ground for the superstructure shall be prepared and the roadbed properly formed to a depth of fifteen inches below the intended surface of the roadway. On this roadbed there shall be placed a sub-foundation of rough rock, six inches deep and a layer of broken stone of macadam nine inches deep, which shall be well compacted by rolling, after which the void spaces shall be filled with loam, sand or macadam screenings by flushing with water. On the surface thus formed there shall be spread a covering of gravel. The whole shall then be well rolled.

SEC. 4. The cost of preparing ground for the superstructure, sub-foundation of rough rock, macadamizing, binding material, top-dressing, rolling and all proper connections and intersections, shall be charged as a lien upon the adjoining property fronting or bordering on the improvement herein provided for, and shall be paid by the owners thereof. When said work is completed, the President of the Board of Public Improvements shall compute the cost thereof, and levy and assess the same, as a special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf

of the contractor, bills of such cost and assessment, accordingly, as required by law.

SEC. 5. The cost of the grading shall be paid by the City of St. Louis, and the sum of three hundred dollars is hereby appropriated on account thereof, payable out of the fund set apart for street improvements.

Approved November 25, 1898.

148 [21,087.]

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. *St.* Louis" by striking out said sections and inserting new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not
ister or indicator, capable of registering passengers to a number not
less than nine thousand nine hundred and ninety-nine, and
149 upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five
A, and for that purpose shall have access at all reasonable
150 times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every Person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-

five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

151 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

I, James R. Gray, acting by consent of parties as Special Examiner herein, do certify that in the above entitled causes now pending and undetermined in the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, there personally appeared before me at my office, Room No. 342 Custom House Building, Eighth, Ninth, Olive, Locust streets, St. Louis, Mo., on Tuesday, the Seventh day of November, A. D. 1905, at 10:30 o'clock A. M., and on divers days thereafter to which the hearing was from time to time adjourned, as appears from the record thereof, Mr. Jefferson Chandler on behalf of the complainants

herein and Mr. Wm. F. Woerner on behalf of the Defendants herein, and E. P. Sommers and J. S. Walsh, Jr., witnesses produced on behalf of the Complainants herein; that the depositions of said witnesses were taken by consent of counsel of the respective parties, formal notice therof being waived by counsel for Defendants; that each of the said witnesses was by me duly sworn in the said cause and his deposition by counsel of parties reduced to writing from short hand notes taken and transcribed under my direction by a skillful stenographer, and read and subscribed by said witnesses in my presence, as appears in the record; that said depositions, as taken down in typewriting, are returned herewith to the Court in which said cause is pending.

I do hereby further certify that I am not of counsel or attorney for or related to either of the parties in this cause, or directly or indirectly interested in said suit, and that my fees amounting to $25.20 have been paid to me by Jefferson Chandler of counsel for Complainants.

In testimony whereof, I have hereunto set my hand this 23rd day of November, A. D. 1905.

JAMES R. GRAY, *Examiner.*

152 And afterwards, to-wit: on the 6th day of June, A. D. 1906, the following among other proceedings were had and appear of record in said cause, to-wit:

4987.

ST. LOUIS AND SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Now at this day this cause is argued by counsel and submitted to the Court.

And afterwards, to-wit: on the 17th day of September, A. D. 1906, the following further proceedings were had and appear of record in said cause, to-wit:

4987.

ST. LOUIS AND SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Decree.

This cause having been heretofore submitted to the Court, upon the evidence and proofs adduced and the Court being fully advised concerning the premises, it is now

Ordered, adjudged and decreed by the Court, that the defendant, City of St. Louis, its officers and agents, be, and they are hereby perpetually enjoined and restrained, from in anywise asserting or seek-

ing to enforce any of the provisions of an alleged ordinance of the said City, numbered 21,087 assumed to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, on cars used by them over its street railway in the City of St. Louis; that the said City of St. Louis, its officers and agents, and each of them be and they are hereby likewise enjoined and restrained from in any manner, by suit or otherwise, asserting or enforcing said alleged ordinance *b*umbered 21,087 against the complainant, and that complainant recover of said defendant its costs and
153 charges herein expended and have execution therefor.

(Signed) G. A. FINKELNBURG, *Judge.*

September 17, 1906.

And afterwards, to-wit: on the 11th day of December, A. D. 1906, the following further proceedings were had and appear of record in said cause, to-wit:

(*Order Allowing Appeal, etc.*)

4987.

ST. LOUIS AND SUBURBAN RAILWAY COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Now comes said defendant by its solicitor and files and presents to the Court its Assignment of Errors and Petition for Appeal from the final decree heretofore rendered herein to the Supreme Court of the United States; upon consideration whereof, it is

Ordered that said petition be and it is hereby granted and that said defendant give an appeal bond for costs in Five Hundred Dollars; thereupon the said defendant presents such a bond conditioned as required by law, which is approved and ordered filed, and it is

Further ordered that the Clerk of this Court make out and certify to the said Supreme Court a full, true, and complete transcript of the record and proceedings in this cause. Citation issued and filed.

G. A. FINKELNBURG, *Judge.*

December 11th, 1906.

Which said Assignment of Errors, Prayed for Appeal, and Bond are respectively in words and figures as follows, to-wit:

154 (*Assignment of Errors.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

In Equity. No. 4987.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

Comes now the City of St. Louis, defendant in the above entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons;

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis impaired the obligations of any of the Special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to construct, operate and
155 maintain street railways in said City, precluded the defendant the City of St. Louis from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license tax by virtue of the special franchise ordinance granting it, or its assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St.

Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its Charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant The City of St. Louis prays that the decree of the Circuit Court be reversed, and that said Court be di-
156 rected to enter a decree in favor of said defendant.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitor- for Defendant.

(Prayer for Appeal to the Supreme Court.)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4987. In Equity.

ST. LOUIS & SUBURBAN RAILWAY COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

Petition for Appeal.

Now comes the City of St. Louis, the above-named defendant by its solicitor-, and conceiving itself aggrieved by the final decree made and entered on the seventeenth day of September, A. D. 1906, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made and entered, duly authenticated, may be sent to said Supreme Court of the United States, at the City of Washington, D. C.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for said Defendant.

St. Louis, Mo. Dec. 12, 1906.

(Bond.)

Know all men by these presents,

That we, The City of St. Louis as principal and Rolla Wells as surety are held and firmly bound unto the St. Louis and Suburban Railway Company in the full and just sum of Five Hun-
157 dred Dollars to be paid to the said St. Louis and Suburban Railway Company or its successors or assigns; to which pay-

ment well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents. Sealed with our seals and dated this 12th day of December in the year of our Lord one thousand nine hundred and six.

Whereas, lately at the September term A. D. 1906, of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between St. Louis and Suburban Railway Company plaintiff and The City of St. Louis defendant final decree was rendered against the said defendant and the said defendant has obtained an appeal of the said Court to reverse the final decree in the aforesaid suit, and a citation directed to the said St. Louis and Suburban Railway Company citing and admonishing it to be and appear in the Supreme Court of the United States at the City of Washington D. C., thirty days from and after the date of said Citation.

Now the Condition of the above obligation is such, That if the said City of St. Louis shall prosecute said appeal to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of
Attest

CITY OF ST. LOUIS, [SEAL.]
[SEAL.] By ROLLA WELLS, *Mayor.* [SEAL.]
ROLLA WELLS. [SEAL.]
PATRICK J. REGAN, *Register.*

Approved
G. A. KINKELNBURG, *Judge.*

158 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4987.

ST. LOUIS AND SUBURBAN RAILWAY CO.
vs.
CITY OF ST. LOUIS.

For the reasons stated in the opinion filed in the case of United Railways Company *vs.* City of St. Louis, No. 4985, I am of opinion that the temporary injunction heretofore issued in this case should be made permanent, and it is so ordered.

Which said opinion filed in said case No. 4985 is in words and figures as follows, to-wit:

159 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS
vs.
CITY OF ST. LOUIS.

FINKELNBURG, *District Judge:*

After a careful examination of the record as now presented, I am persuaded to adhere to the position heretofore taken by Judge Adams at the preliminary hearing of this case, and for the reasons then so well stated by him in his opinion, viz: the inviolability of the contracts entered into between the City on the one hand and the Railway Company on the other hand.

Single detached provisions may indeed be quoted from constitution and city charter which, taken by themselves, would seem to authorize the passage and enforcement of the ordinance here in controversy. But of course these instruments must be construed as a whole and effect given the other portions of them.

In brief, I find that under the constitution, laws and city charter applicable to this subject the City of St. Louis had a right to enter into contracts with reference to the construction and operation of these street railways—that it did enter into such contracts and fixed the terms—that a contract having been entered into its terms were not open to alteration thereafter by the City alone—that ordinance No. 21087 is an attempted violation of the terms of said contracts—that therefore its enforcement ought to be enjoined.

Counsel for defendant in their brief (p. 61) admit that, "if the city had attempted by ordinance to increase the special amounts of fixed sums or on gross receipts that the various companies had contracted to pay in the ordinance conferring these franchises"
160 then the ruling in Detroit *vs.* Railway, 184 U. S. 368, would apply, because they say, "on that point there *was* a contract"; but they contend that in the case at bar no such attempt was made; that the City simply amended its license tax on street cars, and that as to this there never was any contract. I cannot agree with this view of the situation. We must look at the substance, not names. The so-called amended license tax is an exaction of two per cent. on the gross earnings of the complainant's railways *in addition* to what was specially agreed upon as a consideration for the right to construct and operate these railways. The substance and true meaning of such a provision cannot be changed by calling it by another name. As a contract is obligatory on the citizen so it must be binding on the public authority. As Judge Adams well said in the opinion referred to:

"If the City can after once exercising its power and fixing the terms and conditions of its grant, change them in one particular, it can in all. If it can increase the once fixed charge for occupying the streets (called license tax) by 2 per cent. on the gross income it can exact 50 per cent. or more, and of course can utterly destroy the value of the complainant's property. It is this kind of evasion

of property rights which in my opinion the Constitution of the United States (Sec. 10, Art. I) is intended to prevent."

As to the power of the Municipal Assembly to deprive itself of the further right to enforce taxes by contract, the distinction between general taxes and so-called license taxes must be borne in mind. The latter are not within the usual constitutional prohibitions against exemptions, etc. The Municipal Assembly may license or not license a particular occupation or business, or it may exact a license tax for a number of years and exhaust its power to
161 exact any more, as I think it has done in this instance.

The contention that the prior ordinances under which these railways were constructed confer rights of way only, but not the right to use them, or, as defendant's counsel put it, a right "to be" but not "to do," strikes me as an unreasonably narrow construction of thos- prior ordinances. The granting part of these ordinances all contain the words: "To construct, maintain and operate," or words equivalent thereto. But this point is also fully considered by Judge Adams, whose entire opinion I adopt for the purpose of this decision.

In view of the premises I am of opinion that the temporary injunction heretofore issued in this cause should be made permanent, and it is so ordered.

162 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, James R. Gray, Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a full, true and complete transcript of the record and proceedings In case No. 4987 of St. Louis and Suburban Railway Company Plaintiff, *vs.* City of St. Louis Defendant, as fully as the same remains on file and of record in said case in my office and that the original citation is hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at office, in the City of St. Louis, in the Eastern Division of said District, this fifth day of January in the year of our Lord, nineteen hundred and seven.

[Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri,]

JAMES R. GRAY,
Clerk of Said Court,
By —— ——, *Deputy.*

[Endorsed:] No. 4987. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. St. Louis and Suburban Railway Co. against City of St. Louis. Duly Certified Transcript of the Record and Proceedings in the above entitled cause.

Endorsed on cover: File No. 20,520. E. Missouri C. C. U. S. Term No. 194. The City of St. Louis, appellant, *vs.* The St. Louis & Suburban Railway Company. Filed January 10th, 1907. File No. 20,520.

Office Supreme Court, U. S.
FILED.
MAR 10 1908
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 194.)

THE CITY OF ST. LOUIS,
Appellant,
vs.
ST. LOUIS AND SUBURBAN RAILWAY,
Appellee.
No. 20,520.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

APPELLANT'S STATEMENT OF THE CASE.
ASSIGNMENT OF ERRORS.
POINTS AND AUTHORITIES.
ARGUMENT.

CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant, City of St. Louis.

J. W. Steele & Co., Prs., 18 N. Third, St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 194.)

THE CITY OF ST. LOUIS,
Appellant,
vs.
ST. LOUIS AND SUBURBAN RAILWAY,
Appellee.
No. 20,520.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT OF THE CASE.

This is a companion case to that of the preceding one on the docket (No. 193, term number, or No. 20519; City of St. Louis vs. United Railways & St. Louis Transit Co.)

This case is nearly identical with the other, at least so far as any questions of law are concerned.

This cause is an injunction proceeding, brought originally by the complainants (here appellees) by bill in equity filed on April 23, 1904, in the Circuit Court of the United States

for the Eastern Division of the Eastern Judicial District of Missouri, against the City of St. Louis (here appellant) to restrain the latter from enforcing the provision of an ordinance known as No. 21,087, herein below referred to, passed by its legislative body, termed the Municipal Assembly.

The jurisdictional ground alleged is conflict with the impairment of contract clause of the United States Constitution (Section 10 of Article I) and deprivation of property without due process and denial of equal protection of the law (Article XIV of Amendment). The allegations and contentions of the bill and answer are more fully stated below.

A preliminary injunction was awarded by the Court, and made permanent upon final hearing.

The case was heard upon bill, answer, stipulation and certain testimony for complainants (Print. Rec., pp. 50-72). Appeal was duly granted, assignment of errors filed, bond given, and the case duly brought to this Court.

There is little controversy as to the essential facts.

The appellant, City of St. Louis, is a municipal corporation organized under a charter in pursuance of a Special Constitutional Provision, Article IX, Sections 20 to 25 inclusive of the Missouri Constitution of 1875.

The charter provisions authorizing the above ordinance are referred to hereinafter.

The complainant (appellee here) at the time of the institution of this cause was a Missouri corporation engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways. The company operated its cars also beyond the city limits into St. Louis County.

Statement of the Case.

Complainant is the successor of the St. Louis Central & Western Ry. Co., and the St. Louis Cable & Western.

The St. Louis Central & Western received its franchise under ordinance 15,547, approved March 28, 1890 (print. rec., p. 79), under section 8 of that ordinance it acquired the St. Louis Cable & Western. The St. Louis Cable & Western was a narrow guage steam road operated nearly or wholly outside the city limits; it does not, we believe, appear that it obtained any franchise from the city.

Complainant acquired the franchise of the St. Louis Central & Western under ordinance 15,954 (Feb. 6, 1891, print. rec., p. 73), as well as its own franchise rights.

Ordinance 19,350 (April 5, 1898) authorized extensions to complainants and St. Louis & Meramec River Road, and conferred certain other powers not here material. (Print. rec., p. 84.)

Ordinance 19,393 made certain further extensions, etc. (June 10, 1898; print. rec., p. 87).

At the institution of this suit complainant represented about all the street cars in St. Louis except the system of the United Railways or Transit Company (which are here as respondents in cause 20,519 in this court, and which, if there is no impropriety in stating what does not appear in the printed record, it may be suggested, also absorbed complainant since the appeal in this cause was taken). But at the institution of the suit complainant appears as the successor or assignee of a number of former street railway companies which received their respective franchises to operate their lines within the City, from time to time by independent special ordinances.

These "special" or franchise ordinances, for the old rail-

way lines as well as those to complainant, are more particularly referred to hereinafter.

The general ordinance attacked in this cause is known as No. 21,087, and is set out in full in the pleadings and in the agreed statement in the transcript of the Record (Print. Rec., pp. 93-95). This ordinance was enacted and approved March 25th, 1903. It provides that every person, etc., corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay the License Collector of said City, a quarter annual license for each and every car used by them in transporting passengers, "the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months" (Print. Rec., p. 93). The manner of equipping cars to show the number of passengers carried, and the filing of a report, is also provided for. A refusal to comply with the terms of the ordinance is made a misdemeanor punishable by fine (which is, however, not a criminal but a civil proceeding in Missouri). The ordinance further provides that the license-tax therein called for shall not be construed as exempting or excusing the payment "of any sum agreed, assumed or required to be paid by the terms of any special ordinance or agreement or contract, nor as affecting the same in any way, nor as impairing or affecting any license theretofore obtained."

Set out in full, this ordinance is as follows (Print Rec., p. 93):

(21,087).

"An ordinance to amend Sections twenty-one hundred

and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transportating passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-

FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in contiuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number of figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number of

figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table, and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties

of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license, and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed

as impairing or affecting any license heretofore obtained.

Approved March 25, 1903."

It is to be observed that the ordinance does not call for a percentage of gross receipts at all, but for a license tax on each separate car operated, the amount of which is to be determined as above stated.

This ordinance 21,087, imposing the aforesaid license tax is not an imposition for the first time of a license-tax on each street car from and after its passage in March, 1903, but on the contrary purports to be and is merely an amendment of the street car license-tax which was in force at the time and for many years theretofore had been in force, and was in force when all of the franchise ordinances were passed, and which fixed the license-tax at $25.00 for each car per annum. (See print. rec., p. 61 and p. 68). The function of the amending ordinance of 1903, No. 21,087, was mainly to substitute for this fixed sum of $25.00, a sum equal to one mill per passenger on each car.

All of the railway companies constituting the assignors of complainants (whose rights were acquired), as well as complainant itself, at all times complied with the old ordinance, and they have at all times paid the sum of $25.00 per car required to be paid under said ordinance, and continued so to do until the going into effect of Ordinance 21,087 (Print. rec., p. 61 and p. 68).

But upon the passage of the latter, complainant refused to comply with any of its provisions; and when the City served the required notice and threatened to enforce the ordinance against complainant, it instituted this cause to restrain it, on the alleged ground as stated in the bill that the ordinance operated to impair the obligations of contracts

between them and the City, and to deprive complainants of their property without due process of law and to withhold from them the equal protection of the laws, and was hence unconstitutional as in conflict with Section 10, of Article I of the United States Constitution, and Article XIV of the Amendments. (Print. Rec., p. 14).

The bill alleges that said ordinance 21,087 does not call for "a license fee but is an additional unequal charge and compensation assumed to be and is exacted from this complainant as a consideration for rights and franchises already granted to it by contracts with the City of St. Louis and paid for by complainant in accordance with the provisions of said contracts." (Print. Rec., p. 14, par. 17.)

The bill sets out with particularity all the various constitutional and charter provisions involved, with the conspicuous exception of the one vital provision in pursuance of which the said ordinance 21,087 was really enacted, namely the charter right "to license, tax and regulate street cars," which the bill entirely ignores.

The answer sets forth the various defenses to the allegations of the bill, and specifically declares the right of the City to enact the said ordinance 21,087 as a license tax under charter provisions in the answer set up (and hereinbelow given in full), and denies that the special franchise or right-of-way ordinances pleaded as contracts in the bill, can be construed as exercising or surrendering the right of the City to impose the license tax provision in ordinance 21,087.

To be a little more specific, the answer, after setting forth what parts of the bill of complaint are denied and what admitted, and after setting out certain constitutional and char-

ter provisions (amongst them in par. 6 the right to amend, alter or repeal a grant in whole or in part) then goes on in paragraphs 7, 8, 9 and 10 of said answer to set forth its main defense which, since they may be taken as indicative of the main position of the defendant City, we may be pardoned in quoting, as follows: (Print Rec., pp. 42-46):

> (7) And defendant states that having exclusive and plenary power under the Constitution, statutes, charter provisions and laws of the State to grant or withhold its consent to the complainant and its assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did, when complainants desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainants' bill and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainant and their assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise or right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a license fee for the exercise

of such right so conferred on the aforesaid conditions, nor to require payment of a general property tax on complainants' property.

(8) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainant's bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its charter Article III, Section 26, clause 5th, by ordinance, to license, tax and regulate street railroad cars (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21,087, approved March 25, 1903 (being the same the enforcement of which complainants seek to enjoin), which is as follows, to-wit:

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the 'Municipal Code of St. Louis' by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

[Here follow the provisions of ordinance 21,087 which have been hereinabove set out in full, so the same is omitted here.]

(9) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privileges conferred upon the complainant or any of their assignors; that the obligations assumed by complainant and its assignors in the respective ordinances conferring franchises, rights and privileges were in no sense license fees or license taxes upon street cars, but only conditions under which the city consented that said complainant and their assignors could obtain the valuable rights to the use of its streets, and in no way operated to exempt complainant from the imposition of license taxes and fees for the exercise of their business and the rights conferred by said franchises. On the contrary defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25 each year on each street car operated by any street car company and which license fee and tax complainant had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said company upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And defendant further states that when said complainant accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned, and, that it at all times, and all the assignors of said company, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21,087.

And defendant specially denies that the amount re-

quired to be paid is as alleged by complainant "absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it and to the proper discharge of the obligations imposed upon it by the several special ordinances" by it set forth or cast a cloud on the title of the properties of complainant, which impairs its credit.

Defendant states that said license fee or tax is perfectly lawful and reasonable, and does not interfere with the conduct of complainant's business, but that if complainant is unable or indisposed to continue its said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790a of ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of its said franchises and chartered rights, which action complainant has declined to adopt, but on the contrary in open violation of said ordinance 21087, operates street cars and engages in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10). Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies equally with complainant, and that it agreed on June 16, 1898, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinances 19392 and 19393 and referred to in said complainant's bill, and without which the same would not have become effective, to accept all obligations therein imposed on said complainant, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways; and said respective assignors of complainant entered into similar agreements as a condition permit-

ting them to assign such rights or franchises to complainant, wherein said assignors and each of them agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

[In the record as printed, some of the phrases appear in italics; but this is from a cause unknown to this defendant, as in the answer as filed there were no italics used, and the same should be read as if there were none.]

The replication amounts to a general denial of new matter.

The contention of the railway companies, as we understand it, is not that the City of St. Louis had no right to enact this general ordinance in question. It is that the same cannot be made applicable to them because, in the diverse and sundry prior special ordinances (by which the City enfranchised complainant and its assignors, whose rights, privileges and franchises the latter has acquired) the City imposed certain obligations and conditions, amongst which were the payments of certain sums, the repair of streets between rails, etc. (hereinbelow more fully stated), which were themselves an exercise by the City as against appellees of its power to impose license-taxes, and therefore operated as contracts which exhausted the right to impose any further license taxes for the operation of the cars.

The main contention of the City of St. Louis, as set forth in its answer, is, on the other hand, that all of these considerations and payments called for in the special or franchise ordinances to the assignors of the complainant company were merely the contract price of obtaining the consent of the City required by the Constitution of the State, and Charter of the City, and were in no sense

license taxes, and did not affect the power of the City to enact a license tax on each car.

[It is our recollection that for the convenience of the Court all the provisions of the Constitution, Statutes and Charter here in question were collected and set out in a statement, agreed upon as correct (as in the preceding case No. 193—United Railways Case on this docket) and should appear in the record; but by some inadvertence the same were not carried into the record; we presume, however, that this is immaterial as under the Constitution of Missouri the Court below (hence this Court on appeal) takes cognizance of the charter, since the Constitution of Missouri provides in Article IX, Sec. 21, that respecting the St. Louis City Charter "all courts shall take judicial notice thereof."]

The provision of the Missouri Constitution referred to in the answer, is Article XII, Section 20 (Print. Rec., p. 41), as follows:

> "No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

The provision of the City Charter under which ordinance 21087 (and the former ordinance which it amended, which provided for a license tax of $25.00 per annum on each car) was enacted, is found in Article III, Section 26, Clause 5 (see same set out in full below). This clause confers au-

thority on the City "to license, tax and regulate" many kinds of business and vocations, and a multitude of different kinds of vehicles, conveyances, etc., all specifically enumerated, amongst which appear "street railroad *cars.*"

This clause in full is as follows (Charter, Article II, Section 26, Clause 5):

> "Fifth.—TO LICENSE, TAX AND REGULATE VARIOUS KINDS OF BUSINESSES, ETC.; FIX RATES FOR CARRIAGES, DRAYAGE, ETC.; REGULATE WIDTH OF TIRES—TO SUPPRESS CERTAIN OCCUPATIONS AND AMUSEMENTS.—To license, tax and regulate lawyers, doctors, doctresses, undertakers, dentists, auctioneers, grocers, merchants, retailers, hotels, boarding houses, tenement houses, office buildings, public buildings, public halls, public grounds, concerts, photographists, artists, agents, porters, runners, drummers, public lectures, public meetings and shows, real estate agents and brokers, financial agents and brokers, horse and cattle dealers, patent-right dealers, inspectors and gaugers, stockyard proprietors, examiners of titles, conveyancers, mercantile agents, insurance companies and insurance agents, bankers, banking or other corporations or institutions, telegraph companies or corporations, *street railroad cars,* livery and sale stables, hackney carriages, private carriages, barouches, buggies, wagons, omnibuses, carts, drays and other vehicles, and all other business, trades, avocations or professions whatever; to fix the rate for carriage of persons, and of wagonage, drayage and cartage or property, and regulate the width of the tires of all vehicles for heavy transportation; to license, regulate, tax or suppress ordinaries, hawkers, peddlers, brokers, pawnbrokers, money changers, intelligence offices, public masquerade balls, street exhibitions, dance houses, fortune tellers, pistol galleries, lottery ticket dealers, corn doctors; lock, private and venereal hospitals, museums and menageries, equestrian performances, horo-

scopic views, lung testers, muscle developers, magnifying glasses, billiard tables or any other tables or instruments used for amusement; circuses, operatic, theatrical and other exhibitions; shows and amusements, saloons, beer houses, tippling houses, dram shops, and gift enterprises; and to suppress prize fights, coon fighting, dog fights, chicken cock fights, gaming or gambling houses; and to suppress bawdy and disorderly houses, houses of ill-fame and of assignation; to provide for and enforce the registration of all births, marriages or deaths; to license, tax, regulate or suppress all occupations, professions and trades not hereinbefore enumerated, of whatever name and character."

The provisions of the City Charter, under which the numerous special ordinances were enacted which conferred authority upon the various street-car lines assigned to and acquired by appellees, are found in Article X, Section 1-5 of the Charter, and are as follows:

"Section 1. AUTHORITY OF MUNICIPAL ASSEMBLY IN REFERENCE TO STREET RAILROADS—MAY SELL FRANCHISES OR IMPOSE A PER CAPITA TAX OR A TAX ON GROSS RECEIPTS.—The Municipal Assembly shall have power by ordinance to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right of way, or regulating and controlling them after their completion; and also shall have power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a per capita tax on the passengers transported, or an annual tax on the gross receipts of such railroad, or on each car, and no street railroad shall hereafter be incorporated or built in the City of St. Louis except according to the above and other conditions of

this Charter, and in such manner and to such extent as may be provided by ordinance.

Sec. 2. MAY REGULATE RUNNING OF CARS AND RATES OF FARE AND TAX PROPERTY.—The Assembly shall have power to regulate the time and manner of running cars, and the rates of fares on street railroads now or hereafter to be built, and the sale of tickets and exchange therefor between the several companies and to tax the property of street railroad companies in such manner as may be provided by law.

Sec. 3. SURRENDER OF FRANCHISES, HOW EFFECTED.—Any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indisposition, and surrender thereby all their chartered rights or franchises, in such manner and under such terms and conditions as may be provided by ordinance.

Sec. 5. COMPANIES TO KEEP STREET BETWEEN RAILS IN REPAIR.—Street railroad companies shall keep the street between the rails, and to the extent of twelve inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails shall be of the same material as the street itself, and the Municipal Assembly shall provide by ordinance that bond or other security shall be given by the several companies, conditioned for a compliance with the provision of this section."

And in this connection we may refer to the Charter, Article III, Section 26, Clause 11, which confers general power on the city:

"Eleventh.—TO PROTECT RIGHTS OF CITY IN CORPORATIONS—GRANT, REGULATE AND REPEAL RAILWAY FRANCHISES—FREE PASSES ON STREET RAILWAYS PROHIBITED.—To take all needful steps in and out of the State, to protect the rights of the city, in any corporation in which the city may have acquired an interest;

to have sole power and authority to grant to persons or corporations the right to construct railways in the city, *subject to the right to amend, alter or repeal any such grant in whole or in part,* and to regulate and control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles; but every right so granted shall cease, unless the work of construction shall be begun within one year from the granting of the right, and be continued to completion with all reasonable practical speed, and it shall be the cause of forfeiture of the rights and privileges derived from the city, of any railroad company operating its road only within this city, which shall allow any person to ride or travel on its road gratuitously or for less than usual price of fare, unless such person be an officer or employe of such company."

The numerous special or right-of-way ordinances by which complainant and the respective independent street railway companies (which were subsequently consolidated or merged into it were originally authorized to operate in the City of St. Louis, are set out in full in the record (Print. Rec., pp. 72-92). [The complainant by mistake introduced also several ordinances which have no connection with the case, being on foreign subjects (Ord. 19,950 and 19,954, pp. 37, 38), but we believe the issues can fairly be determined without reference to the ordinances which we suppose were really intended to go into the record in their stead.]

These right-of-way ordinances are those which the appellee claims to contain the clauses which are alleged to be an exercise of the City's charter power to license and tax street cars, and that hence that power was thereby exhausted as to appellee, so that when subsequently ordinance 21,087, imposing a license-tax, was enacted, it is alleged to operate as an impairment of the contract-ordinances; or,

differently stated, that the appellee claims to be exempted from the operation of ordinance 21,087 because of the terms of said special ordinance relating to itself and its respective assignor companies.

It is therefore essential, for a proper understanding of this cause, to set out such provisions of these numerous ordinances as may bear on this contention.

The granting part of the said franchises or rights-of-way conferred thereby is in nearly all instances, substantially or literally, to the respective company in question "to operate, maintain and construct" or "to lay down, construct, operate and maintain" or "to reconstruct its tracks and maintain and operate its railway thereon," etc., over certain designated streets. These franchise privileges are conferred upon certain conditions and burdens imposed in these ordinances, the compliance with which complainant says exempts it from paying license-taxes, but which the ordinances say are assumed by complainant (or its respective assignors) as a consideration for the franchise rights conferred. These burdens consist of payments of certain fixed sums payable each year, and also the repair of the streets within the tracks, limit of fare to be charged, and similar conditions herein below specifically set out.

An examination of these ordinances shows that such burdens (particularly payment of fixed amounts to the City per annum) are expressed to be assumed by the grantees *"in consideration of the rights, privileges and franchises hereby granted"* or "rights and franchises granted in this ordinance" (or similar words), etc. Such is the language in the following ordinances, set out in the bill and printed agreed statement, to-wit:

Ord. 15,547, sec. 8, print. rec., p. 83 (St. L. Cent. & W.).

Ord. 19,350, sec. 7, print. rec., p. 86-87 (St. L. & Sub.).
Ord. 19,393, sec. 9, print. rec., p 90 (St. L. & Sub.).

The said burdens "in consideration" of which the franchises were conferred, are to the effect that "the said company shall pay to the City of St. Louis," certain fixed sums per annum (in most instances increasing per year as the franchise ages). This is the case in the following ordinances, to-wit:

Ord. 15,547, sec. 8, print. rec., p. 83 (St. L. Cent. & W.).
Ord. 19,350, sec. 7, print. rec., 86-87 (St. L. & Sub.).
Ord. 19,393, sec. 9, print. rec., p. 90 (St. L. & Sub.).

The above particularly are the clauses calling for the payments claimed to be in lieu of, or as exempting from, the license-tax in question, and are the provisions relied upon by complainants, and special attention is directed thereto.

In some of these ordinances there appear further conditions, for instance, that such payments are to be "in addition to all taxes, *and payments* as now or hereafter prescribed by law," etc. So in case of complainant:

Ord. 19,350, sec. 7, print. rec., p. 86-87.

And in the same ordinance to complainant, "the City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time."

Ord. 19,350, sec. 8, (print. rec., p. 87).

Other, though less important, of the burdens imposed, are that the companies keep the space between the rails and 12 or 18 inches on each side, paved and repaired. We believe every one of the ordinances contains this provision.

It is also stipulated that work be begun on the tracks, or completed, within a certain time. So in ordinances 15,594, sec. 3, (p. 75); 15,547, sec. 6 (p. 82); 19,393, sec. 3 (p. 88).

And in others that the fare charged be not in excess of a certain sum, usually five cents. So in these ordinances:

Ord. 15,594, sec. 3, print. rec., p. 76 (St. L. & Sub.).
Ord. 15,547, sec. 3, print. rec., p. 82 (St. L. C. & W.).
Ord. 19,393, sec. 3, print. rec., p. 88 (St. L. & Sub.).

An important point is that the complainant and its predecessors agree to comply with the provisions of all general ordinances and charter provisions affecting street railways that may now be in force or which may hereafter be enacted.'

Ord. 19,393, sec. 11, print. rec., p. 91 (St. L. & Sub.).
Ord. 19,350, sec. 5, print. rec., p. 86 (St. L. & Sub.).
Ord. 15,594, sec. 4, print. rec., p. 76 (St. L. & Sub.).

The usual penalty for failure to observe any of these conditions and terms is that the same shall "cause the forfeiture of all the rights, privileges and franchises granted," etc.

The Court below construed these special or right-of-way ordinances as being in themselves an exercise of the taxing power (giving in clause 5, sec. 26, Art. III, of the City Charter), and that the conditions therein as above set forth were in fact a license tax, and being contracts, upon acceptance of the companies, could not be added to by another license tax, and hence held ordinance 21,087 to be void as against the complainants. (See opinions print. rec. 101.)

There was some oral testimony offered by complainant in an effort to show the license-tax was too onerous. We

think no force can be attached thereto, for reasons appearing in objections made when the questions were asked.

It appeared in the course of cross-examination that complainant (as well as its associate the St. Louis & Meramec River Co.) had been doing business many years, but had *never* paid any dividends, even while not paying the license-tax complained of; that complainant is capitalized at $7,500,000 of which only $4,000,000 was paid, and that it had issued bonds for borrowed funds in $7,500,000; (rec. p. 54-55; also 68), on which it was paying interest amounting to $375,000 a year (rec., p. 66); that about two per cent of the gross receipts were from sources other than fares (p. 65); that the complainant had always paid the $25 per car tax prior to the amendment by ordinance 21,087, but witness could not tell why the company paid the former but not the latter tax (print. rec., p. 61; also 67); that the company in 1904 (the World's Fair year at St. Louis) carried 21,228,786 adults and 1,667,573 children, or 22,-906,359 passengers; and in 1903 it carried 15,188,352 adults and 1,251,523 children or a total of 16,439,875 (print. rec., p. 65); that the company operates 110 street cars (p. 65); that the company had paid out $3,500,000 to $4,000,000 in the last two or three years and appropriated and applied its receipts and profits in extending its roads into the thinly settled county regions, and reconstructing its lines, so as to discount the future development of that region; that rich returns were expected in future years, by ultimately getting the traffic there (print. rec., pp. 66-67).

The testimony of the other witness Walsh was nothing but a series of personal opinions on legal points and is worthless from the tandpoint of legal testimony.

There were no other witnesses.

The defendant City being dissatisfied with the correctness of the ruling of the lower Court, for the reasons indicated in the assignment and specification of errors next herein set out, appeals to this Court for a reversal of the decree and asks for a dismissal of the bill.

ASSIGNMENT OF ERRORS.

The formal assignment of errors filed and presented by the appellant City of St. Louis (omitting caption, etc.), is as follows (print. rec., p. 98), to-wit:

Comes now the City of St. Louis, defendant in the above entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons:

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21,087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis impaired the obligations of any of the special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to con-

struct, operate and maintain street railways in said City, precluded the defendant. the City of St. Louis, from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis, by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction, maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21,087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license-tax by virtue of the special franchise ordinances granting it, or its assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant, The City of St. Louis, prays that the decree of the Circuit Court be reversed, and that said Court be directed to enter a decree in favor of said defendant.

SPECIFICATIONS OF ERROR.

As indicated in the above formal assignment of errors, appellants contend that the lower court erred in these respects:

(1) It misconstrued the special, or franchise, ordinances or rights-of-way (under which complainants and their predecessors in title, which form the constituent lines of complainants, derived their authority from the city) in construing the same as being in themselves an exercise of the city's right to impose a license tax on street cars under the Charter Article III, clause 5 of section 26, instead of merely terms and conditions for the grant, under the Charter Article X and the State Constitution Article XII, section 20.

(2) In holding the city had, in said special ordinances, contracted away, or attempted to contract away, its power to levy a license tax on street cars.

(3) In holding that if it had so attempted, that it could legally exempt complainants from license taxation in that manner.

(4) In holding that ordinance 21,087 was void because to recognize the city's right to enact it would enable the city to abuse such power, although there was no such abuse shown or decided to exist in the case before the court; in other words, in annulling the city's *power* to tax cars because it *might* abuse the same.

(5) After erroneously holding the conditions of said ordinances to be equivalent to providing for license taxes, in further erroneously holding that, regarded as license taxes, the city could not alter, amend or repeal the same.

(6) In holding that the city could not and did not exact the conditions and terms pleaded in the special or franchise ordinances without trenching upon or exhausting its taxing power.

(7) In holding that the city could contract away its taxing power at all.

(8) In holding that even if it could and did exempt the assignors of complainants, that such immunity passed to the latter.

POINTS AND AUTHORITIES.

I.

General Power to Enact a License Tax on Cars.

It must be conceded that under the Charter of the City of St. Louis (derived from the Constitution itself: Const. Missouri, Art. IX, Secs. 20-25), that City had the broad and specific power, in general, to enact ordinance 21,087 imposing a license tax on all street railway cars operated within its limits, as well as to enact the prior ordinance thereby replaced, which had fixed the amount at $25.00 per car, per annum. The power to tax as well as to license is conferred in express terms.

Charter of St. Louis, Art. III, Sec. 26, clause 5, conferring power to license, tax and regulate street railway cars.

Springfield vs. Smith, 138 Missouri 645, 654, *et seq.*

27 Am. & Eng. Enc. Law (2d Ed.), "Street Railways," p. 52.

See further on the general power of cities to impose license taxes in Missouri:

St. Louis vs. Weitzel, 130 Missouri 600, 619-620.

Aurora vs. McGannon, 138 Missouri 38, 45.

St. Louis vs. Green, 7 Missouri Appeals, 468, 474. 478, affirmed on this point in 70 Missouri 562.

See also, cases *infra* cited in Point II, Sub. (*c*).

Obviously the fact that a portion of the route of the company goes beyond the city limits can make no difference.

San Jose vs. S. J. Ry., 53 California, 475.
Newport News Ry. vs. Newport News, 100 Virginia, 157.

In fact, if there were no authority in the State (acting here through its delegated agent, the City) for the imposition of this tax, the foundation of this Court's jurisdiction would be gone, and the bill would have to be dismissed on that ground.

Savannah, etc., Ry. vs. Savannah, 198 U. S., loc. cit. 396.

It follows that since such license tax ordinance as a general proposition is valid, the appellees are required to pay the same upon their cars, unless they can show affirmatively some valid legal reason why they are excepted from its application. This they seek to do by the claim (1) that the right-of-way or special ordinances conferring upon them and their assignors or predecessors in title the city's consent, of themselves impose such license-tax, which cannot hence be increased or altered by ordinance 21,087 without their consent; or (2) that said right-of-way ordinances should be construed as exempting appellees from all license taxes.

These are ultimately the only two points involved in this case.

II.

An examination of the numerous franchise or right-of-way ordinances to the complainants and their constituent predecessors demonstrates that the conditions therein recited "in consideration" of which the grants were made, are conditions annexed under Article X of the City Charter, and

assumed by the street car companies in order to obtain the City's initial consent, necessary under the State Constitution, and cannot be construed as an exercise of the power conferred in the City Charter in Article III, Section 26, Clause 5, to tax street cars, nor as an exemption from such taxes.

(*a*)

There can be no question as to the right or propriety of the City to impose just such terms and conditions before giving its consent as it chose to impose in the said right-of-way ordinances, to-wit: payment of certain fixed stipulated sums, increasing as the franchise ages, paving and repair of space between the rails, rate of fare, time for completion of work, etc.; all of such provisions stand upon the same basis, but vary in particularity with each respective ordinance.

Whilst it is true in one sense that all Missouri corporations, including street railways, derive their franchises or right to exist originally from the State, acting through the General Assembly under general law, yet the rights-of-way conferred by the City upon street railroads are in effect equivalent to franchises, because unlike other corporations, under the Constitution, no street railroad can be granted the right "to construct and operate a street railroad within any city, town, village, or on any public highway without first acquiring the consent of the local authorities, nor can the franchise so granted be transferred without similar assent."

> Constitution of Missouri of 1875, Art. XII, Sec. 20. Note that in both the Constitution and Charter, an ordinance conferring the City's consent is termed a "franchise."

See also as to such power being equivalent to a franchise:

Blair vs. Chicago, 201 U. S. 400, loc. cit., 457-460; State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 190.

And the Charter of St. Louis also expressly provides that in granting the right-of-way or franchise to a street railway the City "as a consideration therefor, may impose a per capita tax on passengers transported *or an annual tax on gross receipts,*" etc.

Charter of St. Louis, Art. X, Sec. 1.

Now these provisions of Art. X of the Charter are the very terms exercised in the contract ordinances or rights-of-way ordinances (set out Print. Rec., 73 to 87, a synopsis of which is given in our statement *ante*, p. 21-23), which appellees rely on. And this Art. X of the Charter plainly refers to conditions to be annexed to the City's consent (as required by Art. XII, Sec. 20, of the Constitution, *supra*) to a street railway franchise, and these conditions when enacted in the franchise-ordinances and accepted by the companies are the price of such consent, *and are limited to that.*

But this Art. X of the Charter and such conditions annexed to obtaining a franchise thereunder and under the Constitution, is wholly independent of the power to impose a *license tax on street cars* given under clause 5, of sec. 26, of Art. III of the Charter, *supra.*

This distinction goes to the core of the case.

If observed, it follows that the consent conditions to a franchise can not operate as a license-tax on cars.

(*b*)

Under the Constitutional and Charter provisions above cited, the power given to the City is not limited to a mere "yes" or "no" in granting the right-of-way or franchise ordinances, but it may impose such conditions upon its consent as it sees fit.

St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, loc. cit. 252-253.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 457-460.
Allegheny City vs. Street Railway, 159 Pa. St. 411.
27 Am. & Eng. Enc. L. (2nd Ed.) "Street Railways," pp. 21-22.

See also:
Ashley vs. Ryan, 153 U. S. 436, loc. cit. 441-445.

(*c*)

It is therefore obvious that these "considerations" are but the bonus or price paid to the City for its consent to place the street railway companies upon the same plane to do business that other corporations have without any such consent. So far the ordinances are contractual and once accepted are binding as contracts.

But this has nothing to do with the further power of the City to impose a license-tax on street cars, as on any other conveyance using the streets, which power is not contractual, and exists by virtue of a totally different clause of the Charter. There may be a license, and a tax on the license.

One power is to contract, the other is to tax. The lower court ignored this distinction, or rather held that there was none such. While burdens agreed upon in such right-of-way ordinances are sometimes erroneously or inaccurately

called a "tax," in the sense of being a burden, they are in law not included under provisions relating to either general taxes or license taxes.

Metropol. Street Ry. vs. N. Y., 199 U. S. loc. cit. 44-45, 46.

Brooklyn City Ry. vs. N. Y., 199 U. S. 48, loc. cit. 50.

Mayor, etc., vs. Broadway Ry., 97 N. Y. 275, 283-284.

Newport, etc., Railway vs. Newport, 100 Virginia 157, loc. cit. 162.

City of Newport vs. Street Ry., 89 Ky. 29.

It has therefore been uniformly held that such contractual obligations as are in question in this case, assumed by street railway companies in obtaining municipal right-of-way ordinances or franchises "to operate, construct and maintain" street railways, under provisions practically like those here in issue, are never construed as exempting or relieving the street car companies from the imposition of license taxes by duly enacted ordinance of such municipality, even if not imposed until after the acceptance of the companies' franchise ordinances.

There is not a word in any of the ordinances relied upon by appellees that hints at a surrender by the City of its power to tax street-cars, or to exempt them from such tax, or grant an immunity therefrom.

In construing the ordinance of a City conferring upon a street railway company the authority to construct and operate a street railway, the right of the City to exact license ~~tax~~ fees will not be denied unless such right has been expressly

surrendered in the ordinance. Such grants are construed strictly against the corporation companies, and liberally in favor of the public; silence is negation, and doubt is fatal to the claim. There is no such surrender by a grant to operate, construct and maintain a street railway, though given upon compliance with certain conditions and payments. And when the contract ordinance between the City and the company does not in terms dispense with the payment of a license tax, the rights of a company are not impaired by a subsequent ordinance requiring such payment.

Springfield vs. Smith, 138 Missouri, 645, 655.
Wyandotte vs. Corrigan, 35 Kansas, 21.
New Orleans City Ry. vs. New Orleans, 143 U. S. 192.
Railway Co. vs. Philadelphia, 101 U. S., 528.
Met. Street Ry. Co. vs. New York, 199 U. S. 1, loc. cit. 37.
Savannah Ry. vs. Savannah, 198 U. S., 392, 398.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 471-473.
State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 194.
Newport, etc., Ry. vs. Newport, 100 Virginia, 157.
New Orleans vs. Orleans Ry. Co., 42 La. An. 4.
New Orleans vs. New Orleans Ry. Co., 40 La. An. 587.
San Jose vs. S. J. Railway, 53 Cal. 475, 481.
State vs. Herod, 29 Iowa, 123.

See also:

Rochester Ry. vs. Rochester, 205 U. S. 236, 248.
Cleveland Electric Ry. vs. Cleveland, 204 U. S. 116, 130.

If the companies wished or intended to have an exemption of any kind from taxation, or felt it was necessary for the profitable working of their business, they should have required a provision to that effect in their charters.

Memphis Gas Co. vs. Shelby, 109 U. S. 398, followed in New Orleans Ry. vs. New Orleans, 143 U. S. loc. cit., 195, Metropolitan Street Ry. vs. New York Tax Comrs., 199 U. S. loc. cit. 42, and other cases.

Newport, etc., Ry. vs. Newport, 100 Virginia loc. cit. 163.

See also cases, *supra*:

(*d*)

If there were doubt as to whether the special or franchise ordinances here in question should be construed to exempt or relieve the railway companies from payment of the general license tax, such doubt would be removed by the interpretations placed thereon by the companies themselves, which have always recognized the obligation to pay a license tax independently of the contract-ordinances, and which paid the general license-tax fee of $25.00 per car, and continued so to do until the amendment of that general ordinance by ordinance 21,087 in 1903. Obviously if the latter was an attempted impairment of the obligations of the City under the contract ordinances, so was the $25.00 tax ordinance. The amendment did not change the nature of the payment required, but merely the amount and method (which latter are matters not before the Court at this time). If the claim now made, that the special payments under the contract-ordinances worked immunity from a license-tax were correct, it was just as much so when the license-tax was fixed

at $25.00 per car, which, however, the companies all paid. If the present ordinance of 1903 is void, so was the amended one, yet the validity of the latter is admitted by the annual payments made thereunder by the predecessors or assignors of complainants, and indeed, by the latter themselves for years, since their organization.

It is a well-established rule (applicable in favor of a municipality as in any other case) that in case of ambiguity in the language, the contemporaneous interpretation placed upon a contract (though it be an ordinance-contract with a City) by the parties themselves, is entitled to great if not controlling influence, especially if continued over a long period of time.

St. Louis Gaslight Co. vs. St. Louis, 46 Missouri, 121, 127 *et seq.*
St. Louis vs. Laclede Gas Light Co., 155 Missouri, 1 l. c., 19.
Dist. of Col. vs. Gallagher, 124 U. S. 505.
Insurance Co. vs. Dutcher, 95 U. S. loc. cit. 273.
Topliff vs. Topliff, 122 U. S. 121, loc. cit. 131.

(*e*)

Nor is it to be overlooked as corroborative of the plain construction contended for by the City, that while on the one hand there is not an intimation upon which appellee can put its fingers, in any one of the numerous franchise ordinances, which expressly or impliedly *surrenders* the right of the City to tax street cars, yet there are distinct assertions which slipped into the ordinances which show the thought that the right to impose license-taxes is not involved in them, and require the payments on gross receipts (claimed by appellees to be of themselves, or to exempt them from,

license-taxes) to be in addition to "all other taxes and payments now required by law *or ordinance.*" Such reference to other *ordinance* can only mean a license-tax ordinance, and is significant of the light in which the fixed payments are regarded, to-wit, as in no way being of themselves license-taxes.

Ord. 19,350, sec. 7, print. rec., p. 86-87.

(*f*)

Again, the complainants have no standing here because *they have agreed to pay this very tax in issue in the contract-ordinances.*

The predecessors in title of the complainant, and the complainant on its own account, have in the consent-ordinances or franchise from the City, expressly agreed to "comply with the provisions of all general ordinances and charter provisions affecting street railways that may now be in force or which may hereafter be enacted." (See the ordinance so providing, enumerated and designated in appellants' Statement, *ante*, p. 23, with citation to the respective pages, to-wit, pp. 91, 86, 76, of the printed record where said provisions appear).

There *was* such a general license-tax ordinance then in force; and the present one is such a general ordinance, amending the former.

These provisions above quoted from the franchise ordinances of themselves amount to a contractual acceptance of the general ordinance in force when all of these contract-ordinances were enacted and accepted, imposing a license-tax of $25.00 per car, and also are an executory acceptance of the subsequent general one mill ordinance here in issue, amending said prior ordinance.

And this is true, even if in the absence of such agreement incorporating them by reference the said license-tax ordinances would be inapplicable to such companies because operating as an impairment of contract; and in fact even if they were wholly void (which of course is not the case, being here clearly within the City's general power).

Interstate Consolidated Street Ry. vs. Massachusetts, 207 U. S., 79.

III.

If the City had attempted to barter away its power to impose the license-tax in question, in the contract-ordinances conferring its consent, as claimed by appellees, such action would have been void as contrary to law, for either of several reasons.

As shown above in point II, we think that a construction of the right-of-way ordinances upon proper legal principles, will exclude the possibility of appellees being correct that they were intended to be relieved from payment of license-taxes on cars, and we think it will not be necessary to go further. But, for the sake of the argument only, we contend that if the railways were right in that contention, it would not avail them, for such attempted exemption would be void, whether (1) the City attempted expressly to exempt the railway companies, or (2) impliedly imposed a license-tax by providing for the percentage payments to be taken in lieu of such tax, which really amounts to the same thing.

(*a*) The City cannot bind its hands not to tax, or to exempt from taxes.

The sovereign State perhaps has the power to enact a

binding contractual exemption from taxation, were it not prohibited by its constitution, which, however, it is in Missouri: Const. 1875, Art. X, secs. 2, 6 and 7. The City of St. Louis is specially authorized by the Constitution to provide in its charter for levying taxes for municipal purposes, in such manner as is not inconsistent with the constitution and laws. (Const. Art. IX, sec. 21; St. Louis vs. Bircher, 76 Mo. 431; St. Louis vs. Sternberg, 69 Mo., 289, 298.)

But taxation (without which power the municipality ceases to exist) is an attribute of sovereignty that the legislature of this State has not, in fact, cannot, authorize a municipality to contract away, any more than the police power. The legislature cannot delegate a power denied to itself by the Constitution. A contract by a city, attempting it, is to that extent simply ultra vires and void.

Springfield vs. Smith, 138 Missouri, 645 (applying that rule to a street car tax exemption).
State vs. Railroad, 75 Missouri, 208.
Savannah, Thunderbolt, etc., Ry. Co. vs. Savannah, 198 U. S., 392.
People ex rel. Street Ry. vs. Tax Com'r., 174 N. Y. 417, loc. cit. 448, affirmed in 199 U. S. 1.

That a license fee for revenue *is a tax* is settled in Missouri:

St. Louis vs. Spiegel, 75 Missouri, 145.
St. Louis vs. Spiegel, 90 Missouri, 587, loc. cit. 591.

See also:

Springfield vs. Smith, ***supra.***

(*b*) If the argument were sound (which it is not) that the City had exercised and exhausted its license-taxing

power in imposing the conditions of fixed annual payments on gross receipts, which should be regarded as annual license taxes on cars, such an attempt by the City would be void for the additional reason that there would be no uniformity in such a tax, but a different, special and invidiously discriminating license-tax for each and every of the constituent lines of the complainant and through which it holds. The City would have no power arbitrarily to charge one company or individual one price by way of a license, and another in the same business another price. The tax must be uniform upon all within the same class. (Const. Missouri, Art. X, Sec. 3; print. rec., p. 10.) Such a tax must be by general law, substantially uniform in its operation throughout the City, and not by specific, unequal, special, single and dissociated provisions applicable to different individual cases. If so it would be void.

Kansas City vs. Corrigan, 18 Missouri Appeals, 206, 215.
St. Louis vs. Spiegel, 90 Missouri, 587.
St. Louis vs. Spiegel, 75 Missouri, 145.
Aurora vs. McGannon, 138 Missouri, 38, 48.
Railway Co. vs. Philadelphia, 101 U. S., l. c. 537.

See also below under point VI, subdivision (b).

We do not claim it is void, but only that such an absurd result would follow if complainants' contention were sound. No construction, involving such results, will be sustained.

But even if void, then, since these are the conditions under which the railways are authorized to do business at all, it follows they would have no authority to operate whatever, and hence have no standing in court. An essential condition being void, the whole ordinance would be void.

So held in St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, l. c. 253.

See also Allegheny City vs. Ry., 159 Pa. St. 411, loc. cit. 418-419.

IV.

The immunity from taxation burdens would not pass to complainants.

Moreover, such an exemption (if created) even when the main grant is of rights, privileges and franchises to the grantee and its successors and assigns will not pass with an assignment or transfer to the assignee or transferee.

Rochester Ry. vs. Rochester, 205 U. S. 236, collating the authorities.

Phoenix Ins. Co. vs. Tennessee, 161 U. S. 174, 180, *et seq.*

Keokuk Ry. vs. Missouri, 152 U. S. 301, 307, *et seq.*

Railroad vs. Georgia, 98 U. S. 359.

Turnpike Co. vs. Sanford, 164 U. S. 578, 586, *et seq.*

Railroad vs. Pendleton, 156 U. S. 667, 673.

V.

The right to alter, amend or repeal.

(*a*) Again, even if the argument were sound (which of course it is not), that the recited considerations for the right-of-way franchises were to be treated as if they were license-taxes, or operated to exempt from the City's charter power to tax street cars, then treating such provisions as license-tax burdens, the rights conferred would still in that respect be subject to the further provision in the ordinance conferring complainant's franchise that "The City of St.

Louis reserves the right to alter, amend or repeal this ordinance at any time," and also in the charter provision (in force at the times and since these franchise ordinances were enacted) that every such grant is taken "subject to the right to amend, alter or repeal any such grant in whole or in part."

> Ordinance 19,350, sec. 8 (print. rec., p. 87). Charter of St. Louis, Art. III, sec. 26, clause 11. (See Statement, *ante* p. 19.) That this clause applies to street railways is obvious, (and is so recognized in State ex. inf. vs. Lindell Ry., 151 Mo. loc. cit. 181, where it is cited in discussing the railway laws of St. Louis).

Conceding for the argument that the franchises of these companies amount to a contract of exemption, yet since at the time of the adoption thereof there existed the paramount power to repeal, alter or amend, the alleged exemption or relief from future license-taxes may be revoked without impairing the obligations of the contract, because the paramount reserve power, which is treated as if embodied in the contract, deprives the contract of its irrevocable character, at least with respect to such provisions as relief from license-taxation.

> Railway Co. vs. Philadelphia, 101 U. S. 528, loc. cit. 540.
>
> Fair Haven R. R. Co. vs. New Haven, 203 U. S. 379, loc. cit. 388-389.
>
> San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 308.
>
> Interstate Consol. Street Ry. vs. Massachusetts, 207 U. S. 79.
>
> State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.

Citizens' Bank vs. Owensboro, 173 U. S. 639, loc. cit. 644.

Street Railway Co. vs. Sioux City, 138 U. S. 93, loc. cit. 108.

Railroad vs. Georgia, 98 U. S. loc. cit. 365.

(*b*) A further important consideration is that at all times when any of the right-of-way ordinances were enacted which provide for the payments claimed to operate as immunity from the street car license-tax, the general ordinance existed, formed part of the charter of the railroads, and was in fact complied with, fixing a tax of $25.00 per annum on each car; and the City certainly had the right to amend such general ordinance by changing the amount, under its power to alter, amend or repeal any grant in whole or in part, even if it had not power to so do otherwise.

State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.

Fair Haven Ry. vs. New Haven, 203 U. S. 379, 388-389.

Stanislaus Co. vs. San Joachin Co., 192 U. S. 201, and cases there cited.

VI.

The Ordinance is Uniform.

(*a*) There is no merit in the contention that the ordinance denies complainants the equal protection of the law on the ground that it discriminates between street railroads and other public conveyances such as steam roads, automobiles, hacks, etc.

When a city having power to tax vehicles, trades, callings, etc., taxes alike all persons engaged in such business, such

taxation is equal and uniform. Street railroads may be put in a class by themselves.

Metropolitan Street Railway vs. New York, 199 U. S. 1, 47.
Savannah Ry. vs. Savannah, 198 U. S. 392.
Aurora vs. McGannon, 138 Missouri, 38, 48.
St. Louis vs. Bowler, 94 Missouri, 630, 634.
Newport Ry. vs. Newport, 100 Virginia, 157, 161.
Armour Packing Co. vs. Lacy, 200 U. S. 226, 235.

(*b*) Neither is there anything objectionable in the form of this ordinance fixing the amount of the tax according to a graduated scale, instead of a fixed sum.

This phase is considered below under point VIII, where high authorities sustaining such form are cited.

(*c*) But while there is nothing in the argument that Ord. 21,087, wholly general in its provisions, is not uniform, the mere fact that such an argument is made accentuates and emphasizes how absurd it would be to regard each and every of the individual special or contract ordinances conferring the municipal franchises on complainants' assignors as license-tax provisions. See on this point *ante* under point III, sub-division (b).

VII.

The ordinance is not oppressive, unreasonable, or confiscatory. Neither can it be attacked in this case on that ground.

(*a*) The ordinance is certainly reasonable and fair on its face. There is no evidence that is entitled to the slightest consideration, that it is oppressive, confiscatory or unreasonable.

The State, acting through its delegated agent, the City, has a right to impose a license-tax on street cars for the use of the streets, and burdening them with rails, etc., thereby requiring the street car companies (like others) to contribute to meet the burden of the City's government, in which they so largely share. A tax of one mill per day passenger is certainly not excessive in a metropolis of nearly three-quarters of a million people. If the car carries few passengers or remains largely unused, the tax is proportionally less; if jammed with passengers, then more—as it ought. As seen by the citations in point VIII, a tax graduated according to the earning power of the subject thereof, is to be recommended as an equitable adjustment.

(*b*) We fail to see any cogency in the main argument of the lower Court that if the City can impose a mill tax license, assumed to be two per cent of gross receipts (which, however, is erroneous because not allowing for receipts from other sources, such as running of ambulance and funeral cars, and U. S. mail cars, carrying expressage and freight, etc., as permitted to complainant: See, for instance, Ord. 19,350, sec. 6), that then "It can exact 50 per cent or more, and of course can utterly destroy the value of complainant's property." The Court avowedly supposes a case not before it and argues the denial of all power because of possibility of abuse. The argument logically annuls the right of the City to impose any license tax on street cars, or for that matter on any other conveyance, business or subject of such a tax, as the possibility of abuse exists in any such case. It is sufficient answer that abuse is not present in this case.

This Court has long ago demonstrated the fallacy of that argument.

The possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.

Powell vs. Pennsylvania, 127 U. S. 678, loc. cit. 686.

Verdin vs. St. Louis, 131 Missouri 26, loc. cit. 130, per Sherwood, J., citing Powell vs. Pennsylvania, *supra.*

Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 295-296.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, loc. cit. 563.

The argument is in effect that to permit the State (through the City) to tax this company by a license-tax for the privilege granted by its charter, is to destroy that privilege. But the answer is that the company took the charter subject to the same right of taxation in the State that applies to all other privileges and all other property. If the companies wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business, they should have required a provision to that effect in their charters. The Constitution of the United States does not profess in all cases to protect from unjust and oppressive taxation

Met. St. Ry. vs. N. Y. Tax Com., 199 U. S. 1, loc. cit. 40.

New Orleans Ry. vs. New Orleans, 143 U. S. 192, 195.

Memphis Gas Co. vs. Shelby Co., 109 U. S. 398, 400.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, 563.

Newport News Ry. Co. vs. Newport News, 100 Virginia loc. cit. 163.

There is no presumption against the integrity of the Municipal Assembly; but on the contrary, the presumption favorable to that body is constantly indulged that it is actuated by fair considerations and is free from motives of oppression or wrong.

St. Louis vs. Fischer, 167 Missouri, 654, loc. cit. 663.

St. Louis vs. Howard, 119 Missouri, 47, loc. cit. 50.

Mich. Cent. Ry. vs. Powers, 201 U. S. 245, loc. cit. 295.

(*c*) Neither should this Court, in this proceeding, even consider the question whether the tax be excessive if it has been bona fide enacted, and is not a mere disguise to destroy the privileges conferred in the franchises. Given the power to levy the tax or fix the amount of the license, the argument that it operates oppressively is a consideration which is properly addressed to the municipal assembly and not the Courts.

St. Louis vs. Weitzel, 130 Missouri, 600, loc. cit. 620.

St. Louis vs. Green, 7 Missouri Appeals, 468, 478-479 (affirmed on this point in 70 Mo. 568).

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.

Kehrer vs. Stewart, 197 U. S. 60, loc. cit. 69-70.

St. Paul vs. Colter, 12 Minn. 41, 49.

Kansas City vs. Trieb, 76 Missouri Appeals, 478.

Home Ins. Co. vs. N. Y., 134 U. S. 594.
21 Am. & Eng. Enc. L. (2nd Ed.), p. 790.

At all events there is no evidence that the tax is confiscatory or unreasonable.

San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 309-310.

VIII.

The form of the car tax is unobjectionable.

Ordinance 21,087 amended the former ordinance so as to substitute for a fixed annual tax of $25.00 per car, a sum equal to one mill per pay passenger carried. But the tax is still a license-tax *on each car;* it is not a demand for a portion of the fare collected; it is not a tax on the receipts. These may vary, be diminished or increased—the tax never. It is graduated by a fixed method according to the number of persons carried. In the new ordinance the amount is determined by a method uniform and equal in its application to each case. The graduated method is fairer, more equitable, less objectionable. At all events the method is purely one of legislative discretion.

The State and Federal Courts have often sustained this method of graduated tax and recommended it.

Clark vs. Titusville, 184 U. S. 329, loc. cit. 333-334.
Society for Savings vs. Coite, 6 Wall. (U. S.) 594, loc. cit. 608.
Maine vs. Grand Trunk Ry., 142 U. S. 217, l. c. 228-229.
Home Ins. Co. vs. N. Y., 134 U. S. 594, loc. cit. 600.
Aurora vs. McGannon, 138 Missouri, 38.

Amer. Express Co. vs. St. Joseph, 66 Missouri, 675, loc. cit. 680-681.

See also Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 301.

IX.

The dignity of the assailed ordinance as a legislative enactment.

It is also to be remembered that the construction of the lower Court, if sustained, and that asked by appellees, would work a practical annullment of the ordinance, as if it were void.

The Courts will not hold a legislative enactment void except in case of compelling necessity.

The State Constitution provides for the organization of the City of St. Louis by Charter; the Charter provisions are direct delegations of State power to the municipality, and the ordinances enacted by the Municipal Assembly in pursuance thereof, so long as they are in the legitimate sphere of municipal affairs, are entitled to the same force and effect and the same intendments and presumptions of validity as are accorded to enactments of the General Assembly. This is especially true of street railway legislation in St. Louis.

State ex rel. vs. Lindell Ry., 151 Missouri, 162, loc. cit. 182-183.

Grand Ave. Ry. vs. Lindell Ry., 148 Missouri, 637, loc. cit. 645.

See also:

St. Louis vs. West. Union Tel. Co., 149 U. S. loc. cit. 467-470.

St. Louis vs. Boffinger, 19 Missouri 13, loc. cit. 15.

ARGUMENT.

This case is so nearly like that of City of St. Louis vs. United Railways and St. Louis Transit Company, (No. 193, next preceding this case on the docket) that it would be a waste of the Court's time to present a separate argument of the points involved, especially since the complainant was absorbed by the United Railways Company since the appeal herein was taken.

We therefore refer to the written argument appended to our brief in that case, as equally applicable here, except that we will herein point out the few respects in which there is a difference between the two cases.

In this case—St. Louis and Spburban Companies—the ordinances to the respective companies affected, are of more recent date, and there are not so many of them.

The provision is found in the ordinance to the complainant itself that it "agrees to comply with the provisions of all general ordinances and charter provisions affecting street railways that may now be in force or hereafter enacted, and applicable to its entire line of railroad or any part thereof" (Ord. 19,393, sec. 11; see also ord. 19,350, sec. 5, and ord. 15,594 sec. 4; covering the entire system).

The ordinances also differ from most of those set out in the preceding case in that here the annual sums of money to be paid the City by the terms of the consent, ordinances or franchise (claimed by appellees to operate as license-taxes), were all *of fixed sums,* instead of percentages on gross receipts.

The ordinance to complainant also specifically provides that "The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time" (Ord. 19,350, sec. 8). In the other case the provision was not specifically incorporated in most of the ordinances, except as incorporated therein by the paramount provision of the City Charter, which, however, has the same effect in law.

In this case there was some testimony, brought out by complainant, while in the United Railways case there was none.

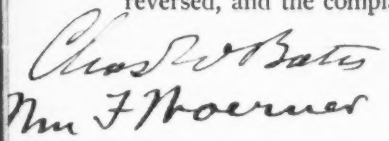
This evidence is referred to in our statement. It consists mostly of incompetent and immaterial opinions, on pure questions of law or pure conclusions of the witness, and we apprehend will be of no use to the Court.

In one respect, however, certain data was elicited that might possibly bear on the question of reasonableness of the tax levied, if that question were open here. It was shown that in 1903 there were carried by this system (which is about one-eighth in extent of that of the United Railways system) 16,439,875 pay passengers, in 110 cars in use. So that if the tax had been paid in 1903, of one mill on each passenger, the sum paid would have been $16,439 for 110 cars, or $149.45 per car.

The figures were also given for 1904, but that being an abnormal year by reason of the vast traffic resulting from the St. Louis World's Fair (to which the company ran) it is not an accurate index. Even then calculation shows the tax would only be a little over $200 per car, even if the company had not increased the number of its cars that year, which supposedly it did, or ought to have done.

In all other respects the cases are similar, at least so far as legal principles are concerned.

We therefore respectfully submit that the cause should be reversed, and the complainant's bill dismissed at its costs.



CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant, City of St. Louis.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 195.

THE CITY OF ST. LOUIS, APPELLANT,

vs.

THE ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 10, 1907.

(20,521.)

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1 In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4988.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Be it Remembered, That heretofore, to-wit: On the 25th day of April A. D., 1904, there was filed in the Clerk's office of said Court a certain bill in equity and seven exhibits and two ordinances, which said bill, exhibits, and ordinances are respectively in words and figures as follows, to-wit:

Petition.

To the Honorable Judges of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri:

The complainant, the St. Louis & Meramec River Railroad Company, files this its bill against the above named defendant, the City of St. Louis, and humbly complaining shows unto your Honors:

1. That the St. Louis & Meramec River Railroad Company is a corporation created by and existing under the laws of the State of Missouri, having its principal office and place of business in the City of St. Louis in the State of Missouri in the Eastern Division of the Eastern Judicial District of said State.

2. That the City of St. Louis is a Municipal Corporation of the State of Missouri, in the Eastern Division of the Eastern Judicial District of said State.

3. That the City of St. Louis is authorized by its charter, through its Municipal Assembly acting by ordinance, to determine all questions arising with reference to street railroads in the corporate limits of the city, which may involve the construction of such street railroads, granting the right-of-way or regulating and controlling them after their completion; and it has power also in like manner to sell the franchises or right-of-way for such street railroads to the highest bidder, or, as a consideration therefor, to impose a *per capita* tax on the passengers transported, or an annual tax on the gross receipts of such railroad on each car, and no street railway may be incorporated or built in the City of St. Louis, except according to the above stated conditions of the charter, and in such manner and to such extent as may be provided by ordinance.

2 4. That the St. Louis & Meramec River Railroad Company was incorporated for the purpose of constructing, maintaining and operating street railways within the City of St. Louis and in the County of St. Louis adjacent to said city, and that it is lawfully authorized and empowered to construct, maintain and

operate street railways in said City of St. Louis, and that by ordinance of said City of St. Louis No. 18667, approved August 29, 1896, and by other ordinances of said city hereinafter mentioned, it was authorized to construct, maintain and operate street railways on the streets in said city in said ordinances described, and to acquire the property, franchises and privileges of other street railway companies in the City of St. Louis and to operate the same, and, pursuant to such authority, it has by construction and purchase acquired a large system of street railways in the said City of St. Louis aggregating many miles; that among the lines of street railway in said city owned and operated by the St. Louis & Meramec River Railroad Company are lines which were authorized to be constructed under and by virtue of ordinances of said City of St. Louis, No. 17,008, approved December 31, 1892, No. 17,375, approved January 30, 1894, and No. 18,231, approved December 28, 1895; that all of said ordinances last named were originally granted to the Manchester Road Electric Railway Company and were duly accepted by said Manchester Road Electric Railway Company, that by the express provisions of said Ordinance No. 18,677 said Manchester Road Electric Railway Company was authorized to transfer to said St. Louis & Meramec River Railroad Company and said St. Louis & Meramec River Railroad Company was authorized to acquire upon such terms as said companies might mutually agree upon, all and singular the railroad of and also all the rights, privileges and franchises theretofore granted to and conferred upon said Manchester Road Electric Railway Company by said ordinances No. 17,008, No. 17,375 and No. 18,231, and it was provided that when said transfer should be made said St. Louis & Meramec River Railroad Company should be granted and was thereby granted and that it should possess, exercise and enjoy said rights, privileges and franchises as fully as if originally granted to it, and should maintain and operate the said railroad acquired by it from said Manchester Road Electric Railway Company in pursuance of said ordinances and in accordance therewith, and it was provided that said ordinance No. 18,677 should become void unless the transfer
3 therein provided to be made was made within one year from the date of the approval of said ordinance, and it was provided further that in the event such transfer was made to it said St. Louis & Meramec River Railroad Company should and would take said ordinances subject to and would carry out and perform all the obligations, requirements, conditions and restrictions therein imposed on said Manchester Road Electric Railway Company, and it was further provided in said ordinance that it should become null and void unless within sixty days after its approval said Manchester Road Electric Railway Company and said St. Louis & Meramec River Railroad Company should file with the City Register their respective written acceptances of the provisions of said ordinance and should also file with the City Register the written consent of the St. Louis & Suburban Railway Company to the provisions of said ordinance No. 18,677 and to the transfer to said St. Louis & Meramec River Railroad Company of the agreement provided for

in section 5 of said ordinance No. 18,231; that all of the conditions of said ordinance No. 18,677 were duly complied with by said St. Louis & Meramec River Railroad Company, said Manchester Road Electric Railway Company and said St. Louis & Suburban Railway Company, and that the said Manchester Road Electric Railway Company duly conveyed to said St. Louis & Meramec River Railroad Company by proper deeds of conveyance all of the railroad and property and all of the rights, privileges and franchises of said Manchester Road Electric Railway Company and said St. Louis & Meramec River Railroad Company thereupon became the owner of said railroad and property and of such rights, privileges and franchises and that it thereupon completed the construction of the several lines of railroad authorized by said ordinances and that it has ever since their completion owned and operated and still owns and operates the same.

4 5. That among the lines of street railway in said city owned and operated by said St. Louis & Meramec River Railroad Company are the lines constructed, maintained and operated under and by virtue of the authority of said ordinances No. 17,008 and No. 17,375; that by the terms of said ordinance No. 17,375, Sections 1, 2, 6 and 7 of said ordinance No. 17,008 were by mutual consent of the said Manchester Road Electric Railway Company and said City of St. Louis repealed and annulled and other sections bearing the same numbers enacted in lieu thereof; that by the terms of said ordinance No. 17,008, as amended by said ordinance No. 17,375, said Manchester Road Electric Railway Company was authorized to construct its lines and maintain and operate the same over the streets of the city therein mentioned for a term expiring January 1, 1925, upon certain express conditions as to the mode of construction and operating the same, and upon the condition and for the consideration that it should not charge for the transportation of passengers in excess of rates of fare in said ordinance No. 17,375 prescribed, to-wit: Not to exceed two and one-half cents for persons over five and under twelve years of age nor to exceed five cents for persons twelve years of age and over for a continuous passage one way, which said right to charge as aforesaid is indispensible to the operation of complainant, and that if in the future said Manchester Road Electric Railway Company, its successors or assigns should be able to make a contract and traffic agreement with any existing street railway by which passengers might be carried from the western limits of the city to the terminus of such connecting line for a single fare to be divided between the two railroads it should make such contract and agreement or forfeit all its rights, franchises and privileges under said ordinance and that whenever such contract should be made said Manchester Road Electric Railway Com-

5 pany, its successors or assigns, should operate owl cars between its eastern terminus and the city limits as was at that time provided by ordinance for roads having a downtown terminus east of Seventh street and between Poplar and Carr streets, and that if the said Manchester Road Electric Railway Company should ever sell its line to or become consolidated with another company or

acquire ownership or control of another line then the consolidated or purchasing company, its successors, or assigns, or lessees should be bound to carry passengers over its entire line in the city as far west as the city limits for a single fare of two and a half cents for children over five and under twelve years of age, and five cents for persons twelve years old and over, and upon the further condition and as a consideration for the grant of the rights, privileges and franchises given by said ordinance No. 17,008 and ordinance No. 17,375 said Manchester Road Electric Railway Company should pay to the City of St. Louis beginning five years after the acceptance of ordinance No. 17,375, annually on the first day of July for the first five years thereafter one thousand dollars per annum and for the next five years two thousand dollars per annum, and said Manchester Road Electric Railway Company, its successors and assigns further undertook, stipulated and agreed on the first day of July of each year beginning fifteen years after the acceptance of said ordinance, to file with the Comptroller of the City of St. Louis a full and complete statement of the gross earnings of said railway company or its said line for the preceding year, subscribed and sworn to by its president and secretary and that it should pay to the Treasurer of the City of St. Louis within ten days after the filing of each and every such statement during the remainder of the term of said ordinance, the sum of three per cent. on the amount of its gross earnings for each year, which amount should in no one year be less than
6 three thousand dollars, which said payments should be in addition to all other taxes or license fees now or hereafter prescribed by law, and that should said Manchester Road Electric Railway Company at any time purchase, lease or in any manner whatsoever acquire the control or management of any other railway or line, or should it in any manner become the property of or pass into the control or under the management of any other railway line, company or system, or should the property or franchises of said Manchester Road Electric Railway Company by reason of the adoption of a joint or general change for several lines or for any reason or in any manner be so managed or operated as to make a separate and distinct report of its gross earnings impracticable, then for such time the report or statement of gross earnings upon which said per cents were to be paid and which must be filed as stated, should be determined and made as follows: The amount of gross earnings so to be reported for said purpose of taxation should be in the same proportion to the gross earnings of the entire line of the railway company or system of which for the time being it, the said Manchester Road Electric Railway Company should form a part, as the mileage of said Manchester Road Electric Railway Company should be to the mileage of such whole line, railway company or system and that the Mayor, Comptroller, Register or Treasurer of the City of St. Louis should have the right at any time to examine the books and papers of the said company, its successors and assigns, or the books and papers of any other company or railway in conjunction with which it might be operated, for the purpose of ascertaining the gross earnings upon which the said per cents are

to be paid, and that a failure on the part of the said company, or its successors or assigns, or on the part of any other company, railway or system in conjunction with which it might be operated, to file a true and correct annual statement or report, as in said ordinance provided, or to pay the aforesaid tax on the gross receipts within thirty days after such statement should be filed, or after such tax should become due and payable, should work a forfeiture of the rights, privileges and franchises granted by said ordinance, and the amount of said tax should also constitute a legal demand against said company, and that any violation of any of the provisions of section 6 of said ordinance No. 17,008 as amended should work a forfeiture of all the rights, privileges and franchises granted under said ordinance, and upon the further condition and as a consideration for the grant of said rights and franchises that it, the said Manchester Road Electric Railway Company, its successors and assigns should, at its own cost and expense, grade all streets upon which its tracks are laid for the full width of said street and from building line to building line to the satisfaction of the Board of Public Improvements, and upon the further condition and as a consideration for the grant of the rights, privileges and franchises conferred by said ordinance No. 17,008 as amended by said ordinance No. 17,375, that it, the said Manchester Road Electric Railway Company, should, when any part of the Manchester Road upon which said railway was authorized to be constructed, should be repaired or reconstructed, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks and twelve inches outside thereof to be repaired or reconstructed with the same material or better with which the remainder of said street should be repaired or reconstructed, and upon the further condition and as a consideration for the grant of the rights, privileges and franchises conferred by said ordinance No. 17,008, as amended by said ordinance No. 17,375, that within one hundred and twenty days after said ordinance as amended should be approved said Manchester Road Electric Railway Company should file its written acceptance in the office of the City Register of all of the provisions of said ordinance and deposit with the City Treasurer the sum of two thousand dollars as security that it would within one year from the date of the approval of said ordinance in good faith begin the work therein provided to be done, and that it would complete the work within two years from the date said work should be commenced, and that unless said company should file its written acceptance of the provisions of said ordinance and deposit the said sum of two thousand dollars and commence the work as in said ordinance provided the rights and privileges therein granted should cease and become void and the money deposited should thereupon absolutely become the property of the City of St. Louis and no claim should thereafter be made or allowed to refund the same or any part thereof. And the said ordinance No. 17,008, and ordinance No. 17,375 amendatory thereof, were accepted by the said Manchester Road Electric Railway Company for itself, its successors and assigns, and constitute a contract between the said City and the said company,

its successors and assigns, which the said city has no right or authority to alter, impair or abrogate.

6. That among lines of street railway in said city owned and operated by the St. Louis & Meramec River Railroad Company are the lines constructed, maintained and operated under and by virtue of an ordinance of the said City of St. Louis, No. 18,231, approved December 28, 1895, to said Manchester Road Electric Railway Company, that by said last named ordinance said Manchester Road Electric Railway Company was authorized to extend its lines and to maintain and operate the same over the streets of the City of St. Louis therein mentioned for a term expiring January 1, 1925, upon certain expressed conditions as to the mode of constructing and
9&10 operating the same, and upon the condition and for the consideration that it should not charge for the transportation of passengers in excess of the rates of fare in said ordinance prescribed, to-wit: two and one-half cents for children over five and under twelve years of age, and five cents for persons over twelve years of age for a single continuous passage either way between any two points on said railroad within the city limits or between any point on said railroad east of the city limits, and any point on the connecting railroad over which the said Manchester Road Electric Railway Company, its lessees, successors or assigns, should transport its passengers to and from Sixth street; and that the rights and privileges granted by this ordinance should become null and void unless said railway company should, within sixty days after the signing of said ordinance by the mayor and before any work was done on the said extension by said ordinance authorized, file with the City Register an agreement duly and properly signed and executed by the St. Louis & Suburban Railway Company, which should secure the transportation of passengers between the western terminus of the said Manchester Road Electric Railway Company at the city limits to any point upon the line of said St. Louis & Suburban Railway Company, or vice versa, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over, either by continuous passage or by transfer; and that all the rights and privileges granted by said ordinance should become null and void if and when at any time thereafter said company, its lessees, successors or assigns, should fail to afford transportation to its passengers from the city limits on the line of said Manchester Road Electric Railway to any point on the line of the St. Louis & Suburban Railway Company, and
11 from any point on the line of the St. Louis & Suburban Railway Company to the western terminus of the said Manchester Road Electric Railway Company for a single fare either way, either by continuous passage or by convenient transfer, and that children's tickets should be sold by conductors on the cars two for five cents; and upon the further condition and as a consideration for the grant of the rights, privileges and franchises conferred by said ordinance, No. 18,231, that it, the said Manchester Road Electric Railway Company, its successors and assigns should, before

laying its tracks upon the unimproved portion of Sarah street, cause such portion of said Sarah street to be graded so as to conform to the established grade for its full width from building line to building line at the expense of said Manchester Road Electric Company in such manner as might be approved by the Board of Public Improvements; and upon the further condition and as a consideration for the grant of such rights, privileges and franchises that whenever tracks should be laid upon any unimproved portion of Sarah street said railway company should cause the space between its tracks and rails, and for two feet outside thereof, to be improved and kept improved with macadam, or such other material as the Street Commissioner should direct, and whenever such street should be improved or paved, constructed or re-constructed, the spaces between its rails and for one foot outside of its track should be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portion of said street; and upon the further condition and as a consideration for the rights, privileges and franchises granted by said ordinance, No. 18,231, that the said Manchester Road Electric Railway Company, its successors and assigns, should pay into the City Treasury, on the first day of January, 1897, the sum of one thousand dollars, and a like sum
12 on the first day of January, each year thereafter until and including the year 1905, and the sum of two thousand dollars on the first day of January, 1906, and a like sum on the first day of January each year thereafter until and including the year 1910, that such payments should be in addition to the annual payments provided for in section 6 of ordinance No. 17,375, approved January 30, 1894, and that all of the provisions of said section 6 of said ordinance No. 17,375 concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company, should apply to the entire line of said railway company including the extension authorized by said ordinance, No. 18,231, and that in consideration of the right to build and operate the extensions covered by said last named ordinance the total amount of the gross earnings of the company paid to the city should not be less than five thousand dollars per annum; and said ordinance further provided that any failure upon the part of said Manchester Road Electric Railway Company, its successors or assigns, to comply with the conditions and requirements of said ordinance should work a forfeiture of all rights granted by the same, and should constitute a breach of the bond required by said ordinance to be given to the said city; and the said ordinance, No. 18,231, was accepted by the said Manchester Road Electric Railway Company for itself, its successors and assigns, and constitutes a contract between the said city and the said company, its successors and assigns, which the said city has no right or authority to alter, impair or abrogate. And on the eighth day of September, 1896, the St. Louis & Meramec River Railroad Company purchased and, by proper deed of conveyance, acquired all the rights, property and franchises of the said Manchester Road Electric Railway Company, including the right to

maintain and operate the lines of railway in the said City of
13 St. Louis authorized by said ordinances, Nos. 17,008, 17,375 and 18,231; that all of said lines of street railway have long since been constructed and have, since their completion, been maintained and operated continuously by the said St. Louis & Meramec River Railroad Company, and all the conditions of the aforementioned ordinances have been kept by the said companies, and all the payments required by the said ordinances to be made by them have been made as the same have respectively become due; that the lines of railway authorized by said ordinances Nos. 17,008, 17,375 and 18,231, were originally constructed upon the surface of Manchester avenue and upon Sarah street as the surface of said streets then existed, and that since said lines of railroad were so originally constructed the said St. Louis & Meramec River Railroad Company, under and by virtue of its contracts with said City of St. Louis as embodied in the said ordinances, has been required by the said City of St. Louis to change the grade of said streets from the surface as it existed at the time said lines of railroad were constructed to the grades established by said ordinance, and that said St. Louis & Meramec River Railroad Company had been required to expend, and has expended, enormous sums of money in the changing of said grades, and that by reason of the said change of grade it became necessary for it to entirely re-construct a large portion of said lines of railway on said Manchester avenue, and nearly the whole of said lines on Sarah street, and that it has been required to fulfill, and has fulfilled, its contractual obligations as contained in said ordinances with reference to paving, re-paving, construction and re-construction of said streets, and has expended enormous sums of money in such paving, re-paving and re-construction.

7. That among the lines of street railway in said city owned and operated by said St. Louis & Meramec River Railroad Com-
14 pany are lines constructed, maintained and operated under and by virtue of the authority of ordinance No. 19,350 of said City of St. Louis, approved April 5, 1898; that by the terms of said last mentioned ordinance said St. Louis & Meramec River Railroad Company was authorized, in conjunction with the St. Louis & Suburban Railway Company, to extend its lines and to maintain and operate the same over streets of the City of St. Louis therein mentioned for a term expiring February 6, 1936, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition and as a consideration for the grant of rights, privileges and franchises conferred upon it by said ordinance, No. 19,350; that it, the said St. Louis & Meramec River Railroad Company, its successors and assigns, in conjunction with the said St. Louis & Suburban Railway Company, would pay to the Treasurer of the City of St. Louis for account of said city the sum of three thousand five hundred dollars per annum on the 31st day of December of each year, such payments to be in addition to all other taxes and payments required by any law or ordinance at the date of said ordinance, No. 19,350; and the said ordinance, No.

19,350, was accepted by said St. Louis & Meramec River Railroad Company, and by said St. Louis & Surburban Railway Company, and constitutes a contract between the said city and the said companies, and each of them which the said city has no right or authority to alter, impair or abrogate; that the said lines of street railway so authorized by said ordinance, No. 19,350, were long since constructed and have been maintained and operated continuously since they were constructed by the said St. Louis & Meramec River Railroad Company and the said St. Louis & Suburban Railroad Company, and all the conditions of the said ordinance, No. 19,350, have been kept by the said companies, and all the payments
15 required by the said ordinance to be made by them have been made as the same respectively became due.

8. That among the lines of street railways in said city owned and operated by said St. Louis & Meramec River Railroad Company are the lines authorized by ordinance of the City of St. Louis, No. 19,392, approved June 10, 1898; that by the said ordinance No. 19,392 the said St. Louis & Meramec River Railroad Company was authorized to extend its lines and to maintain and operate the same over streets of the City of St. Louis therein mentioned for a term of years expiring January 1, 1925, upon certain expressed conditions as to the mode of constructing and operating the same, and upon the condition and for the consideration that it should not charge for transportation of passengers in excess of the rates of fare in said ordinance prescribed, to-wit, two and one-half cents for children over five and under twelve years of age, and five cents for persons over twelve years of age, for a single continuous passage either way between any two points on the railroad of said St. Louis & Meramec River Railroad Company within the city limits, including all the lines of road then operated by said company within said city limits, or between any point on or to said railroad already operated or to be operated under said ordinance No. 19,392, east of the city limits, and on or to any point on the St. Louis & Suburban Railway Company's lines over which the said St. Louis & Meramec River Railroad Company, its lessees, successors or assigns then or thereafter might transport its passengers to and from Sixth street, making such transfers and using such transfer tickets as might be necessary; and upon the further condition and as a consideration for the grant of the rights and franchises conferred upon it by said ordinance, No. 19,392, that it, the said St. Louis & Meramec River Railroad Company, its successors and assigns, should, at its own cost
16 and expense, before laying its tracks authorized by said ordinance, cause the streets, wherever such tracks were to be laid, to be graded from curb to curb, to the approval of the Board of Public Improvements, and upon the further condition and as a consideration for the grant of said rights and franchises to it, that it, the said St. Louis & Meramec River Railroad Company, its successors and assigns, should, whenever its tracks should be laid upon any unimproved portion of the route authorized by said ordinance, cause the space between its tracks and rails, and for one foot outside

thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner should direct, and that whenever such street should be improved or paved, constructed or reconstructed, the space between its rails and for one foot outside of its tracks should be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portions of said street; and upon the further condition and as a consideration for the grant of said rights, privileges and franchises, that it, the said St. Louis & Meramec River Railroad Company, should pay into the City Treasury, beginning two years after the acceptance of said ordinance, No. 19,392, annually on the first day of July for the first five years thereafter one thousand dollars per annum, and for each year thereafter two thousand dollars per annum up to 1910, and from and after the year 1910 that the provisions of section 6 of said ordinance, No. 17,375, concerning the percentage of gross receipts to be paid to the city and the manner of ascertaining the gross receipts of said company, should apply to the entire line of said railroad including the extension authorized by said ordinance, No. 19,392; and it was further provided by said last named ordinance that all the provisions of the city ordi-
17 nances, Nos. 17,008, 17,375 and 18,231, so far as the same were in force and apply to the present line of said St. Louis and Meramec River Railroad Company, as the successor of the Manchester Road Electric Railway Company, should continue in force and apply to the entire line of railroad including the extension provided for in said ordinance, No. 19,392, except so far as the same might be modified by or be inconsistent with the provisions of said last named ordinance; and said ordinance further provided that any violation on the part of said St. Louis & Meramec River Railroad Company, its successors or assigns, to comply with the conditions and requirements of said last named ordinance should work a forfeiture of all the rights granted by the same, and should constitute a breach of the bond required by said ordinance to be given to the said City of St. Louis. And the said ordinance No. 19,392 was accepted by the said St. Louis & Meramec River Railroad Company, and constitutes a contract between the said city and the said company, which the said city has no right or authority to alter, impair or abrogate; that the said lines of street railway so authorized by said last named ordinance were long since constructed, and since their completion have been maintained and operated continuously by the said St. Louis & Meramec River Railroad Company, and all conditions of said ordinance No. 19,392 have been kept by the said company, and all the payments required by the said ordinance to be made by it have been made as the same respectively became due.

9. This complainant shows that by the provisions of the several ordinances in this bill of complaint hereinbefore mentioned and set forth, all of the ordinances being hereto attached and made part hereof, marked respectively exhibits "A," "B," "C," "D," "E" and "F," the said St. Louis & Meramec River Railroad
18 Company is restricted in its charges for transporting passengers over its lines of railway, and over the lines of rail-

way of the St. Louis & Suburban Railway Company, to five cents for each passenger above the age of twelve years, and to two and one-half cents for each passenger between the ages of five and twelve years.

10. And this complainant shows that by provisions of said ordinance No. 19,392, it is required to operate the street railways in the City of St. Louis owned and operated by it substantially as one system, and it is provided in and by said ordinances that transfers shall be given so as to transport passengers by continuous trip from any point on its system, or on the system of said St. Louis & Suburban Railway Company, to any other point on the system, and such transfers are so given by complainant free of any charge additional to the fare of five cents, or of two and one-half cents, originally paid by the passenger.

11. And this complainant shows to the Court that the several sums required by it to be paid under the provisions of the various ordinances hereinbefore set forth, the grading of the streets, the construction, re-construction, paving, re-paving, repairing and maintaining the spaces in the streets used by it, required by it to be done as hereinbefore set forth by the several ordinances aforesaid, the limitations imposed by said ordinances upon the rate of fare which may be charged by complainant for travel and transportation over its said lines of street railway and the requirement for the giving of transfers to passengers as set out above, were and are the considerations exacted, demanded and stipulated for by the said City of St. Louis from this complainant, and its predecessor in right and title, for the rights granted by the said city to construct, maintain and operate the said lines of street railway, and no other
19 right or privilege of any kind, and no other thing of value of any kind whatsoever was given or granted to the complainant, or its predecessor in right and title, by the said city in consideration of the aforesaid requirements made of it, and the said ordinances constitute contracts and agreements between the said complainant and the said City of St. Louis, giving right, license and authority to the said St. Louis & Meramec River Railroad Company to maintain the said lines of street railway and operate cars over the same for the transportation of passengers, which said contracts are irrevocable except by the agreement of the parties thereto for the terms thereof.

12. And the complainant shows that the City of St. Louis had authority, under its charter and laws and the Constitution of the State to provide by contract, through the form of ordinances enacted in that behalf, for the construction, maintenance and operation of street railways over the streets of the said city, and to prescribe the conditions thereof and the considerations therefor; and that, by the ordinances hereinbefore mentioned, the said City of St. Louis did contract with the several companies hereinbefore named, and their successors and assigns, the St. Louis & Meramec River Railroad Company, for the construction, maintenance and operation of said several lines of railway, and did by said ordinances pre-

scribe the consideration to be paid therefor, which consideration has in all cases been paid.

13. And complainant shows that the said City of St. Louis, the premises notwithstanding, by ordinance No. 21,087 (which is hereto attached and made part hereof marked exhibit "G"), approved March 25, 1903, assumed to enact and provide that all persons, copartnerships, associations and companies engaged in the business of transporting passengers from one point to another within
20 the said City of St. Louis for hire on street railways, should pay the License Collector of the said City of St. Louis an alleged license for each and every car used by them in transporting passengers, which so-called license was to be payable on the sixteenth day of April, July, October and January of each year for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December; the amount of such alleged license on each such car to be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding three months ending as aforesaid. And the said so-called license, so assumed to be authorized and imposed by the said ordinance, No. 21,087 imposes a charge upon the gross receipts from the carriage of passengers greatly exceeding two per cent. of the same. And no rights, privileges, franchises or considerations of any kind whatsoever are granted by said ordinance in consideration of the charge so assumed to be imposed, and no rights, privileges or properties of any kind whatsoever are granted by the said ordinance, or may be required or held under the same, other than those already possessed by the complainant under previous ordinances of and contracts with the said city. And it is provided in said ordinance, No. 21,087, that every company or association required thereby to pay a street car license shall provide for and equip each car used in the transportation of passengers with a suitable register or indicator capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered in continuous numerical succession the number of passengers who have paid for transportation on each car. And it is further provided that each of such corporations, companies or associations shall make report of the number of passengers carried by it on each car daily,
21 for the previous day, to the Register of the City of St. Louis, showing the number of pay or revenue passengers carried by it. And it is provided by said ordinance that every person, corporation, company or association refusing or neglecting to make the report so provided for shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five dollars nor more than five hundred dollars. And it is provided by said ordinance that any person, company, corporation or association which it is assumed is required to pay such street car charge or license, and which shall fail or neglect to pay the same within ten days after notice from the License Collector, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars,

and each day of such failure, neglect or refusal shall constitute a separate offense. And it is provided in said ordinance that a failure, refusal or neglect to pay such so-called license, for thirty days after the same is by the terms of said ordinance payable, shall operate as a revocation of any existing or subsequent unpaid license which such parties may have obtained to operate such street cars in said city. And it is provided in said ordinance that nothing herein contained shall be construed as excepting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance or agreement or contract, nor as replacing or affecting the same in any way, nor shall said ordinance be construed as impairing or affecting any license theretofore obtained.

14. And, notwithstanding the premises, the said City of St. Louis is demanding, under pretense of authority of the said last named ordinance, of the complainant herein that it shall pay to the said City of St. Louis, on all revenue or pay passengers carried
22 by it, the sum of one mill for each revenue or pay passenger so carried over the lines of said railway owned or operated by said St. Louis & Meramec River Railroad Company, in the said City of St. Louis.

14*a*. And this complaint shows that it is provided by the Constitution of the State of Missouri, which was adopted in the year A. D. 1875, in Article X, thereof among other things as follows, viz.:

"SECTION 1. Taxing Power, How Exercised.—The taxing power may be exercised by the General Assembly for State purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

"SECTION 3. Taxing for Public Purposes Must be Uniform.—Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws.

"SECTION 4. Taxes in Proportion to Value.—All property subject to taxation shall be taxed in proportion to its value.

"SECTION 5. Railway Corporations, Taxed for What Purposes.—All railroad corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes, on the real and personal property, owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock.

"SECTION 10. General Assembly Shall Not Tax Municipalities, When.—The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other
23 municipal purposes but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

"SECTION 11. Rates For Local Purposes—Limits—How Increased

for Schools and Erection Public Buildings.—Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for State and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars, and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For city and town purposes the annual rate on property in cities and towns having thirty thousand inhabitants or more shall not, in the aggregate, exceed one hundred cents on the hundred dollars valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; and in towns having one thousand inhabitants or less, said rate shall not exceed twenty-five cents on the hundred dollars valuation. For school purposes in districts, the annual rate on property shall not exceed forty cents on the hundred dollars valuation: Provided, The aforesaid annual rates for
24 school purposes may be increased, in districts formed of cities and towns, to an amount not to exceed one dollar on the hundred dollars valuation, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are tax payers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city, or school district, voting at such election, shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for state and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last census taken under the authority of the State, or of the United States; said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness."

14*b*. And it was provided by general law of the State of Missouri, in pursuance of the constitutional provisions hereinbefore set forth, as shown in Article VIII, of Chapter 149, of the Revised Statutes of Missouri for the year 1899, that railroad companies were to be assessed by the State Board of Equalization of the State of Missouri

for all purposes of taxation, state, county and other municipal or local purposes, and that the taxes levied thereon should be levied in the manner by said law provided, to-wit, upon the cash value of all the property owned by such railroad company, return
25 whereof was to be made to said Board of Equalization. And it was provided by the laws of the State of Missouri enacted in 1897, and found in sections 9353, 9354 and 9355 of the Revised Statutes of 1899, as follows:

"SECTION 9353. Street Car Companies to Make Statement.—On or before the first day of January in each year, the president or other chief officer of every street railroad company in every city of this state whose line is now or shall hereafter become so far completed and in operation as to run horse cars, electric cars, cable cars or cars propelled by any other device for the transportation of passengers, shall furnish to the state auditor a statement, duly subscribed and sworn to by said president or other chief officer, before some officer authorized to administer oaths, setting out in detail the full length of the line, so far as completed, including branch or leased lines, the entire length in this State, the length of double or side tracks, the length of such line located upon real estate to which such company may have title as right of way, real estate, the length of such line located upon the public streets or thoroughfares of any city, together with all cars, motors, grip cars, live-stock, electric trolley wires, cables, cable conduits, power houses, stables and all other property, real, personal or mixed, owned, used or leased on the first day of June, which may be used in or incident to the operation of such street railroad, the length of such line in each county, municipal township and city through or in which it is located, and the cash value of the several items embraced in the statement.

"SECTION 9354. Taxes to Be Levied.—The said property returned to the State auditor, as by section 9353 required, shall be subject to taxation for state, county, municipal and other purposes to the same extent as the real and personal property of private persons, and the same shall be assessed, apportioned, certified and
26 the taxes thereon levied and collected at the time and in the manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property.

"SECTION 9355. Purpose of Certain Sections.—It being the purposes of the two preceding sections to make the property of street railroads in cities assessable and taxable in the same manner which is now or may hereafter be provided by law for the assessment and taxation of other railroad property, all acts and parts of acts inconsistent or in conflict therewith, are hereby repealed."

14c. And it was provided by the laws of the State of Missouri, approved March, 1901, as follows:

"SECTION 1. The franchises (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and all other similar corporations owning, operating and managing public utilities, and of all quasi public corporations possessing special and peculiar privileges and authorized by law to perform any public service

(except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation.

"SECTION 2. The State board of equalization in cases of
27 railroads, street railroads, bridges, telegraph, telephone companies and all other corporations whose property the state board of equalization is now or may hereafter be required to assess, and the county assessor, in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporation, tangible and intangible, in this State, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessor's books, under the head of 'all other property.'"

14*d*. And it is provided by the laws of the State of Missouri, Section 9357, Revised Statutes A. D., 1899, that of the taxes levied upon the railroad and street railroad properties of the State and collected therefrom, each county, municipal township, city or incorporated town of the State shall receive its due share of the taxes levied and collected for municipal purposes, to-wit, the taxes levied for municipal purposes upon the portion of the property located within the municipality, with the due proportion of franchise value added; and the City of St. Louis had no right or authority to levy any taxes, public charges or burdens upon the property or business of this complainant, other than as provided by the general laws of the State of Missouri, hereinbefore referred to, and the said City had no right to levy upon or demand or collect from this complainant any portion of its gross receipts, or to impose any *per capita* charge on the passengers transported by complainant, except as the same was done by the ordinances and contracts granting the rights to the complainant, or to its predecessors in right and title, to use the streets of the said City of St. Louis for street railroad purposes, and as a consideration for the grant of such rights.

28 15. And complainant shows that the said City of St. Louis pretends and claims that the said charge of one mill for each revenue or pay passenger assumed to be provided for and imposed by said ordinance Numbered 21,087 is required to be paid by complainant in addition to the several sums and taxes provided to be paid under the several ordinances granting to the St. Louis & Meramec River Railroad Co., and its predecessors in right and title, the right to construct, maintain and operate its lines of street railway in the said City of St. Louis.

16. And this complainant shows that the said ordinance No. 21,087, if by its terms it imposes such additional charge, is illegal, unconstitutional and void, because imposing a tax, charge or consideration for rights, privileges and franchises theretofore granted to and already possessed by the complainant.

And such ordinance is in violation of the provisions of the Constitution of the United States, section 10, of Article 1 thereof, which provides that no State shall pass any law impairing the obligations of contracts; and is in violation of Article 14 of the Amendments to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, which said ordinance does.

17. The complainant shows that said ordinance if it imposes a charge of one mill or any other sum upon each revenue or pay passenger carried by the complainant over its lines of street railway in the said City of St. Louis, impairs the obligation of the contracts made by the several ordinances hereinbefore recited, and by imposing additional and heavy burdens and charges as a condition of using, enjoying or exercising the rights and franchises granted by said
29 special ordinance and by assumed legislative enactment, deprives this complainant of its property without due process of law and withholds from it the equal protection of the law.

18. And this complainant shows that the said so called license charge assumed to be imposed by the said ordinance No. 21,087, is not a license fee, but is an additional unequal charge and compensation assumed to be and is arbitrarily exacted from this complainant as a consideration for rights and franchises already granted to it by contracts with the City of St. Louis, and paid for by complainant in accordance with the provisions of said contracts.

19. And this complainant shows that said St. Louis & Meramec River Railroad Co., purchased the franchises and properties and constructed the lines of railway hereinbefore mentioned, upon the faith of the inviolability of the said contracts between the said company and its predecessors in right and title, and the said City of St. Louis, and the bonds and stocks in large amounts of the said St. Louis & Meramec River Railroad Co. were negotiated and are now held by many persons, who acquired the same on said faith, and the value of the properties, rights, franchises and privileges of said company, and the fixed right of complainant to retain and use all its revenues and all its bonds and stocks, will be greatly impaired and depreciated, if said ordinance No. 21,087 is enforced, according to its terms as asserted by the said City of St. Louis.

20. And this complainant shows that the said City of St. Louis intends and threatens to and will unless prevented by the interposition of this Honorable Court, deny to complainant the equal protection of the law and assert the said ordinance No. 21,087, against this complainant as imposing a present and existing charge upon it of one mill for every revenue passenger carried by it, and thereby

cast a cloud upon the title of the properties of this complainant, greatly impairing its credit.

30 And the said ordinance, if enforced, according to its terms, will deprive this complainant of revenue amounting to many thousands of dollars per annum, which are absolutely required for the purposes of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it, and to the proper discharge of the obligations imposed upon it by the several special ordinances hereinbefore set forth.

And the said city intends and threatens and will unless prevented by the interposition of this Honorable Court, institute numerous vexatious legal proceedings to compel plaintiff to comply with the provisions of said ordinance No. 21,087, in the form of suits to recover the penalties prescribed by said ordinance and by suits to forfeit other franchises, rights and privileges acquired and held under the provisions of the several special ordinances hereinbefore set forth, and as a result, complainant will be subjected to great loss, damage, hinderance and annoyance in the conduct of its business, which it is entitled to carry on without such proceeding, suit, annoyance, hinderance loss and damage, and will be greatly impaired in its ability to properly conduct the services assumed by it, and imposed upon it by the several special ordinances above mentioned.

Plaintiff further alleges that the right to charge for transportation on its lines of railways constitutes the source of its entire revenue; that complainant has outstanding bonds and other obligations which it must meet and pay, and which require the collection, retention and use therefor of all the revenues and income which complainant possesses, has or can acquire under the operation of its business as a transportation company; that a diminution of its revenues by subtracting therefrom the amount of taxes herein described and

31 threatened to be collected by the City of St. Louis under said ordinance will leave said revenues inadequate and insufficient to meet and pay complainant's operating expenses and other obligations already incurred; that the said ordinance, by means of which said additional tax therein mentioned is threatened to be collected, is unconstitutional and void, for the reasons that it discriminates against complainant company by providing for an unequal tax on the property of said company and a tax not uniform in its application to the property of the citizens of St. Louis and discriminates against plaintiff and its property; that said ordinance in its operation denies to complainant the equal protection of the law and arbitrarily, without any consideration therefor, confiscates the property of complainant to the extent of the taxes in said ordinance threatened to be enacted, contrary to the Constitution of the United States and the amendments thereof, herein indicated; that the right to make the charge for transportation herein mentioned and set forth, and to collect, use, and apply the same to complainant's obligations is the only consideration moving to complainant, enabling it to equip, operate and keep in repairs its lines of transportation and to conserve public safety.

21. All of which actings and doings and threatened actings and doings of the said City of St. Louis are contrary to equity and good conscience, and will entail irreparable damage upon complainant, and inasmuch as complainant is without remedy, except in a Court of Equity, and to the end that the complainant may have the relief to which it is entitled, and that the said defendant may answer the premises but not upon oath or affirmation, answer upon oath or affirmation being hereby expressly waived by complainant, may it please Your Honors to grant unto complainant a writ of subpœna to be directed to the City of St. Louis, commanding it at a
32 certain time and under a certain penalty to be therein named, to be and appear before this Honorable Court, then and there full, true, direct and perfect answer to make to all and singular the premises; and complainant prays that the said City of St. Louis may be perpetually restrained and enjoined from in any wise asserting or seeking to enforce said ordinance No. 21,087 against this complainant, and that said ordinance be declared to be null and void.

And complainant prays that a temporary restraining order issue out of and under the seal of this Honorable Court against the said City of St. Louis, its officers, agents and attorneys, enjoining them, and each of them, from in any wise, by suit or otherwise, asserting or enforcing said ordinance No. 21,087, against the complainant, until the further order by the Court in the premises; and that upon the final hearing hereof, the said injunction be made perpetual.

And complainant prays for such other and further relief as it may be entitled unto and as to the Court may seem meet and proper.

JEFFERSON CHANDLER,
Solicitor for Complainant.

STATE OF MISSOURI, *City of St. Louis, ss:*

E. H. Benoist, being first duly sworn on oath deposeth and says, that he is the vice-president of the complainant company, the St. Louis & Meramec River Railroad Company; that he has read the foregoing bill of complaint for the said company, and knows the contents thereof, and that the matters and things therein set forth, are true as he verily believes.

E. H. BENOIST.

Subscribed and sworn to before me this 19th day of January, 1904, by the said E. H. Benoist.

EDWIN W. MILLS,
Notary Public, City of St. Louis, Mo.

33 EXHIBIT "A."

[17,008.]

An ordinance authorizing the Manchester Road Electric Railway Company to construct, maintain and Operate a double track passenger railway, on, along and across certain streets and highways in the City of St. Louis, and to operate its lines of railroad by electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Authority is hereby given to the Manchester Road Electric Railway Company, its successors and assigns, to build, maintain and operate a double track passenger railway for public use, on and along the following route, to-wit: Beginning on the street known and hereinafter referred to as Manchester Road, at its intersection with the western line of Kingshighway; thence extending on and along said Manchester road and across all streets and alleys and roads intersecting therewith, to the western limits of the City of St. Louis. And the said railway company, its successors and assigns, may also construct, maintain and operate any and all curves, turn-outs, switches, sidings, cross-overs and connections, and may make any and all excavations which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis. The
34 tracks of said road shall be laid from Kingshighway to Barron avenue, in the center of the road, from Barron avenue to a point about three hundred feet west from Kraft street, on the south side of Manchester road, and from this point west to the city limits, in the center of the road.

SEC. 2. Said railway company, its successors and assigns, may operate its railroad along the route authorized herein, by electricity, either by storage batter, the conduit underground or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power may be erected and placed either between the tracks of said railroad or along the curbs of said streets and from Kingshighway to Barron avenue, and also from a point three hundred feet, more or less, west of Kraft street to the city limits; from Barron avenue to a point three hundred feet, more or less, west of Kraft street they shall be placed between the tracks, the wires to be not less than twenty feet above the surface of the street, and to be of such form and material and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said railway company, its successors and assigns, shall have the right to make any and all changes and improvements from

time to time in its machinery, apparatus and appliances which may be found necessary or advantageous to said company in its enterprise, provided the same shall meet the approval of said Board of Public Improvements. Said company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the streets over which it constructs its railroad, and at all points where said road crosses any of the streets of the City
35 of St. Louis, the said railway company shall, at its own cost and expense, grade all streets upon which its tracks are laid, for the full width of said streets from building line to building line, to the satisfaction of the Board of Public Improvements. From and after the completion of said railroad, said Manchester Road Electric Railway Company, its successors and assigns, shall run passenger cars over said railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its said railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of the machinery of said company, or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance. The fare from any point on its line to any other point on its line, as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons under twelve years of age, and not exceed five cents for persons twelve years of age and over, for a continuous passage one way. The rights, privileges and franchises hereby granted are granted subject to the following conditions and proviso, to-wit: Before said company shall be permitted to operate said road along the line above mentioned, or any part thereof, it shall enter into a binding contract with one or more other street railway companies whereby, for a single fare of five cents for adults, and two and one-half cents for children under twelve years of age, as hereinbefore provided, passengers may be conveyed from the western limits of said city, as hereinbefore mentioned, by proper transfers, to the eastern, northern and southern ends of such connecting companies' lines.

36 Sec. 4. Whenever any part of said Manchester Road, through which said railway shall run, shall be repaired or reconstructed, said company shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of said street is repaired or reconstructed.

Sec. 5. Within one hundred and twenty days after this ordinance shall be approved, said company shall file its written acceptance in the office of the City Register, of all the provisions of this ordinance, and deposit with the City Treasurer the sum of two thousand dollars as security that it will, within one year from the date of the approval of this ordinance, in good faith begin the work herein provided to be done, and that it will complete the work within two years from the

date said work shall be commenced. And unless the said company shall file its written acceptance of the provisions of this ordinance, deposit the above amount and commence work as herein provided, the rights and privileges herein granted by the provisions of this ordinance shall cease and become void, and the money deposited shall thereupon absolutely become the property of the City of St. Louis, and no claim shall hereafter be made or allowed to refund the same or any part thereof.

SEC. 6. In consideration of the rights and franchises granted by this ordinance, the said railway company shall pay to the City of St. Louis, annually, beginning from the time of the acceptance of this franchise, after the first five years of the franchise, one thousand dollars per year for five years; for balance of the franchise two thousand dollars per year.

SEC. 7. The said Manchester Road Electric Railway Com-
37 pany in accepting this ordinance agrees to comply with the provisions of all general ordinances now in force, or that may be passed in the future governing the construction, maintenance and operation of street railroads.

SEC. 8. This ordinance and all the rights, privileges and franchises hereby granted, shall cease and terminate January first, nineteen hundred and twenty-five.

Approved December 31, 1892.

EXHIBIT "B."

[17,375.]

An ordinance amendatory of ordinance number seventeen thousand and eight, entitled "An ordinance authorizing the Manchester Road Electric Railway Company to construct, maintain and operate a double track passenger railway on, along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power," approved December thirty-first, eighteen hundred ninety-two, by striking out sections one, two, six and seven, and inserting other sections in lieu thereof, and providing for the acceptance of said ordinance as amended.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Ordinance number seventeen thousand and eight, entitled "An ordinance authorizing the Manchester Road Electric Railroad to construct, maintain and operate a double track passenger railway on, along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power," approved December thirty-first, eighteen hundred and ninety-two, is hereby amended by striking out sections one, two, six and seven, and inserting in lieu thereof, the following:

38 SECTION 1. Authority is hereby given to the Manchester Road Electric Railway Company, its successors and assigns,

to build, maintain and operate a double-track passenger railway, for public use, on and along the following route, to-wit: Beginning on the street known and hereinafter referred to as Manchester Road, at a point west of its junction with the Old Manchester Road, and where the tracks of the Lindell Railway Company leave said Manchester Road; thence extending on and along said Manchester Road and across all streets and alleys and roads intersecting therewith, to the western limits of the City of St. Louis. And the said Manchester Road Electric Railway Company, its successors and assigns, may also construct, maintain and operate any and all curves, turn-outs, switches, sidings, crossovers and connections, and may make any and all excavations which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

The tracks of said road shall be laid from Kingshighway to Barron avenue, in the center of the street; from Barron avenue to a point about three hundred feet west from Kraft street, on the south side of Manchester Road, and from this point west to the city limits, in the center of the road, unless otherwise ordered by the Board of Public Improvements, which Board is hereby authorized to make such changes as to the designated portions of said streets to be occupied by said tracks as it may deem necessary.

SEC. 2. Said Manchester Road Electric Railway Company, its successors and assigns, may operate its railroad along the route authorized herein, by electricity, either by storage battery, the
39 conduit underground, by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power, may be erected and placed between the tracks of said railroad, or along the curbs of said streets, and from Kingshighway to Barron avenue, and also from a point three hundred feet, more or less, west of Kraft street, to the city limits. From Barron avenue to a point three hundred feet, more or less, west of Kraft street they shall be placed between the tracks, the wires to be not less than twenty feet above the surface of the street, the poles to be of iron and of such form and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said railway company, its successors and assigns, shall have the right to make any and all changes and improvements, from time to time, in its machinery, apparatus and appliances, which may be found necessary or advantageous to said company in its enterprise, provided the same shall meet the approval of said Board of Public Improvements. Said Manchester Road Electric Railway Company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the street over which it constructs its railroad, and the rails and ties of said road shall be so laid that they shall in no way obstruct, interfere with or impede the travel on the streets through which they are laid, and shall, at no point, be above the

level of the roadway, even though said roadway be either above or below the established grade, but said rails shall, at all times, be on a level with all streets which said road crosses and intersects, and the said Manchester Road Electric Railway Company shall, at its own cost and expense, grade all streets upon which its tracks are laid, for the full width of the streets, from building line to building
40 line, to the satisfaction of the Board of Public Improvements.

From and after the completion of said railroad, said Manchester Road Electric Railway Company, its successors and assigns, shall run passenger cars over said railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes.

Said Manchester Road Electric Railway Company may run its cars on its railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of the machinery of said company, or by any other extraordinary accident or emergency shall not be deemed a violation of this ordinance.

The fare from any point on its line to any other point on its line as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons over five and under twelve years of age, and not exceed five cents for persons twelve years of age and over, for a continuous passage one way; or if in the future said Manchester Road Electric Railway Company, its successors or assigns, shall be able to make a contract and traffic agreement with any existing street railway, by which passengers may be carried from the western limits of the city to the terminus of such connecting line for a single fare, to be divided between the two roads, it shall make such contract and agreement or forfeit all its rights, franchises and privileges under this ordinance; and whenever such contract is made said company, its successors or assigns, shall operate owl cars between its eastern terminus and the city limits, as
41 now provided by ordinance for roads having a down town terminus east of Seventh street and between Poplar and Carr streets.

And if the said Manchester Road Electric Railway Company shall ever sell or lease its line to or become consolidated with another company, or acquire ownership or control of another line, then the consolidated or purchasing company, its successors, assigns or lessee, shall be bound to carry passengers over its entire line in the city, as far west as the city limits, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over.

SEC. 6. In consideration of the rights and franchises granted by this ordinance, said railway company shall pay to the City of St. Louis, beginning five years after the acceptance of this franchise annually, on the first day of July, for the first five years thereafter, one thousand dollars per annum, and for the next five years, two thousand dollars per annum.

And said Manchester Road Electric Railway Company, its successors and assigns, further undertake, stipulate and agree, on the first day of July of each year, beginning fifteen years after the acceptance of this ordinance, to file with the Comptroller of the City of St. Louis a full and complete statement of the gross earnings of said railway company or its said line, for the preceding year, subscribed and sworn to by its President and Secretary; and shall pay to the Treasurer of the City of St. Louis, within ten days after the filing of each and every such statement during the remainder of the term of said ordinance, the sum of three per cent. on the amount of its gross earnings for each year, which amount shall in no one year be less than three thousand dollars. Which said payments shall be in addition to all other taxes or license fees now or hereafter prescribed by law.

42 Should said Manchester Road Electric Railway Company at any time purchase, lease or in any manner whatsoever acquire the control or management of any other railway or line, or should it in any manner become the property of, or pass into the control or under the management of any other railway line, company or system, or should the property or franchises of said Manchester Road Electric Railway Company be reason of the adoption of a joint or general charge for several lines, or for any reason, or in any manner, be so managed or operated as to make a separate and distinct report of its gross earnings impracticable, then for such time the report or statement of gross earnings upon which said per cents are to be paid, and which must be filed as stated, shall be determined and made as follows: The amount of gross earnings so to be reported for said purposes of taxation shall be in the same proportion to the gross earnings of the entire line, railway, company or system of which for the time being it forms a part, as the mileage of the Manchester Road Electric Railway Company bears to the mileage of such whole line, railway company or system. The Mayor, Comptroller, Register or Treasurer of the City of St. Louis shall have the right at any time to examine the books and papers of said company, its successors and assigns, or the books and papers of any other company or railway in conjunction with which it may be operated, for the purpose of ascertaining the gross earnings upon which the said per cents are to be paid.

The failure on the part of the said company, or its successors, or assigns, or on part of any other company, railway or system, in conjunction with which it may be operated, to file a true and correct annual statement or report as herein provided, or to pay the aforesaid tax on gross receipts, within thirty days after such statement should be filed, or after such tax becomes due and pay-

43 able, shall work a forfeiture of the rights, privileges and franchises granted by this ordinance, and the amount of said tax shall also constitute a legal demand against said company; and any violation of any provisions of this section shall work a forfeiture of all rights, privileges and franchises granted under this ordinance.

SEC. 7. The Manchester Road Electric Railway Company, in accepting this ordinance, agrees to comply with the provisions of

all general ordinances and charter provisions now in force and with all general ordinances and charter provisions affecting street railroads that may hereafter be enacted.

SEC. 2. Unless said Manchester Road Electric Railway Company shall file its written acceptance of the provisions of this ordinance with the City Register, within sixty days from date of the approval of this ordinance, the provisions of this ordinance shall be void and of no effect.

Approved January 30th, 1894.

EXHIBIT "C."

[18,677.]

An ordinance to authorize the Manchester Road Electric Railway Company to transfer its railroad tracks and all its rights, privileges and franchises obtained from the City of St. Louis to the St. Louis & Meramec River Railroad Company, and to authorize said last named company to acquire the same and to maintain and operate its double track passenger railroad over said tracks in pursuance of and in accordance with said rights, privileges and franchises so acquired.

44 Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Manchester Road Electric Railway Company is hereby authorized and empowered to transfer to the St. Louis and Meramec River Railroad Company, and said St. Louis and Meramec River Railroad Company is authorized to acquire upon such terms as such companies may mutually agree, all and singular the railroad of, and also all the rights, privileges and franchises which have heretofore been granted to or conferred upon said Manchester Road Electric Railway Company by the City of St. Louis by its ordinances numbers seventeen thousand eight, seventeen thousand three hundred seventy-five and eighteen thousand two hundred thirty-one, and when said transfer is made said St. Louis and Meramec River Railroad Company is hereby granted and shall possess, exercise and enjoy said rights, privileges and franchises as fully as if originally granted to it, and shall maintain and operate the said railroad acquired by it from said Manchester Road Electric Railway Company in pursuance thereof and in accordance therewith. Provided, however, that this ordinance shall become void unless the transfer hereinbefore authorized is made within one year from the date of the approval of this ordinance; and provided, further, that in the event such transfer is made to it, said St. Louis and Meramec River Railroad Company shall and will take said ordinances subject to and will carry out and perform all the obligations, requirements, conditions and restrictions therein imposed on said Manchester Road Electric Railway Company.

SEC. 2. This ordinance shall become null and void unless within

sixty days after its approval the said Manchester Road Electric Railway Company and St. Louis and Meramec River Railroad Company shall file with the City Register their respective written acceptance of the provisions of this ordinance, and shall also file with the City Register the written consent of the Suburban Railway Company to the provisions hereof, and to the transfer to said St. Louis and Meramec River Railroad Company of the agreement of said Suburban Railroad Company provided for in section five of ordinance number eighteen thousand two hundred and thirty-one.

Approved August 29th, 1896.

EXHIBIT "D."

[18,231.]

An ordinance authorizing the Manchester Road Electric Railway Company to extend its tracks and to construct, maintain and operate its double track railroad along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power, and to construct and maintain feed wire lines and prescribing conditions therefor.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Manchester Road Electric Railway Company, its lessees, successors and assigns, is hereby authorized to extend its tracks and construct, maintain and operate a double track railroad, together with all necessary turn-outs, switches, sidings and loops, over, along, across and upon the streets, alleys and public places on the following route, viz.: From the intersection of Manchester avenue (formerly called Manchester Road) and Sarah street; thence northwardly on, along and over said Sarah street, and across all intervening streets, alleys and public places to the intersection of Sarah street with the tracks of the St. Louis and Suburban Railway Company; there to connect with the tracks of the St. Louis and Suburban Railway Company, with the privileges of acquiring from said St. Louis and Suburban Railway Company the right to run its cars upon and over the tracks of said last named company and when so acquired the right is hereby given to operate cars on said tracks from said junction on Sarah street to the eastern terminus of the tracks of said St. Louis and Suburban Railway Company, by lease, traffic agreement or otherwise.

SEC. 2. Said railway company, its lessees, successors and assigns, may operate said extension along the route authorized herein in connection with its line of road to be operated under ordinance number seventeen thousand three hundred and seventy-five, by electricity, either storage battery, the conduits, underground, or by overhead wire system, through overhead and supplementary ground circuits, and for this purpose the poles, wires, conduits or other appliances necessary or

convenient in the use of electricity as a motive power may be erected and placed either between the tracks of said railroad or along the curbs of said streets, as may be directed by the Board of Public Improvements; said poles shall be of iron or steel, and the wires shall not be less than twenty feet above the surface of the street; said poles to be of such form and design and at such portions of the streets as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done. The location of the poles and tracks shall be submitted to the Board of Public Improvements for their approval, and shall be placed where designated by said Board of Public Improvements, and such poles and tracks shall, at any time thereafter, be removed, at the expense of said railway company, to such other portions of the streets occupied by them as the said Board may by order direct. And the said railway company shall have the right to make all reasonable and proper excavations in said streets, and all changes and improvements from time to time in its machinery, apparatus and appliances, subject, however, to the approval of the Board of Public Improvements.

Before laying its tracks upon the unimproved portion of Sarah street, the said railway company shall cause such portion of Sarah street to be graded, so as to conform to the established grade, for its full width, from building line to building line, at the expense of said company, in such manner as may be approved by the Board of Public Improvements.

And the said Company shall cause the grade of its roadbed and tracks to conform to the now, or hereafter established grade of Sarah street, and the rails and ties of said road shall be so laid that they shall in no way obstruct or interfere with or impede the travel on the streets through which they are laid, and shall at no point be above the level of the roadway, but said rails shall at all times be on a level with all streets which said railroad crosses or intersects.

From and after the completion of said extended line of railroad said Manchester Road Electric Railway Company, its lessees, successors and assigns, shall run passenger cars over said railroad every day of the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its said extended line of railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operation by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of machinery of said company or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance, and said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall operate owl cars between Sixth street and the city limits, as is now provided by ordinance for roads having a downtown terminus east of Seventh street, and between Poplar and Carr streets.

SEC. 3. In addition to the right of said company to erect and

maintain feed wires and poles along the line of its railroad, as provided by section two of this ordinance, and by ordinance number seventeen thousand and eight and number seventeen thousand, three hundred and seventy-five, said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall have the right and privilege of obtaining electric power for the operation of its railroad from its terminus at the city limits along the line of its route, including its extended line of railway herein authorized to be constructed and built, from the St. Louis and Suburban Railway Company by feed wires extending from the power house of said St. Louis and Suburban Railway Company to the line of said Manchester Road Electric Railway Company; and said Manchester Road Electric Railway Company is hereby authorized to erect and maintain poles for the carrying of said feed wires and to maintain and operate said feed wires over, along, across, and upon the streets, alleys and public places on the following route, viz.: Beginning at the power house of said St. Louis and Suburban Railway Company, situated near De Hodiamont Station, on or near the line dividing the City of St. Louis from the county of St. Louis; thence by the most feasible route as determined by the Board of Public Improvements, and over, along, across and upon all intervening streets, alleys and public places to the north end of the Skinker road; thence southwardly over, along, across and upon said Skinker road and over and across all intervening streets, alleys and public places to McCausland avenue; thence southwardly over, along, across and upon said McCausland avenue and over and across all intervening streets, alleys and public places to the line of said Manchester Road Electric Railway Company on Manchester avenue (formerly
49 called Manchester Road). Such wires to be not less than twenty feet above the surface of the streets, and such poles to be of iron or steel, of such form, and placed at such distances and at such portions of the street as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done. The location of such poles shall be submitted to the Board of Public Improvements for their approval, and shall be placed where designated by said Board of Public Improvements; provided, that said Manchester Road Electric Railway Company, its lessees, successors, or assigns, shall, whenever ordered so to do by the Board of Public Improvements, remove such feed wires and poles authorized by this section from above the streets and other public places, and shall place such feed wires underground in such streets, alleys and public places in such manner as may be directed by the Board of Public Improvements, and to the satisfaction of such Board.

Sec. 4. Whenever tracks shall be laid by said company upon any unimproved portion of Sarah street, said company shall cause the spaces between its tracks and rails, and for two feet outside thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever such street is improved or paved, constructed or reconstructed, the spaces

between its rails and for one foot outside of its tracks shall be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portion of said street.

SEC. 5. The rate of fare shall not exceed two and one-half cents for children over five and under twelve years of age, nor five cents for persons over twelve years of age, for a single continuous passage either way, between any two points on said railroad within
50 the city limits, or between any point on said railroad east of the city limits, and any point on the connecting railroad over which the said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall transport its passengers to and from Sixth street.

The rights and privileges granted by this ordinance shall become null and void unless said railway company shall, within sixty days after the signing of this ordinance by the Mayor, and before any work is begun on said extension, file with the City Register an agreement, duly and properly signed and executed by the St. Louis and Suburban Railway Company, which shall secure the transportation of passengers between the western terminus of the said Manchester Road Electric Railway Company at the city limits to any point upon the line of said St. Louis and Suburban Railway Company, or *vice versa*, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over, either by continuous passage or by transfer. All the rights and privileges granted by this ordinance shall become null and void if, and when, at any time hereafter said company, its lessees, successors or assigns, shall fail to afford transportation to its passengers from the city limits on the line of said Manchester Road Electric Railway to any point on the line of the St. Louis and Suburban Railway Company, and from any point on the line of the St. Louis and Suburban Railway to the western terminus of the said Manchester Road Electric Railway Company, for a single fare either way, either by continuous passage or by convenient transfer. Children's tickets shall be sold by conductors on the cars, two for five cents.

SEC. 6. Within thirty days after the signing of this bill by the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall execute its bond
51 to the City of St. Louis in the penal sum of twenty thousand dollars, with at least two securities, to be approved by the Mayor and Council, conditioned that it will save the city harmless on account of all damages that may be sustained by the city, or by any person or persons, firm or corporation, during the construction of said extension, or on account of the building of such road; and conditioned, further, that said company will faithfully comply with all the conditions of this ordinance. Said bond shall be renewed from time to time, whenever requested by the Municipal Assembly, if the security on said bond is found inadequate to the risk, or when requested to do so by the Mayor, and any failure to renew the same when so required shall work a forfeiture of this franchise.

SEC. 7. The work authorized by this ordinance shall be com-

pleted within six months after the signing of this ordinance by the Mayor, and said road shall be in operation within said six months from the city limits to the eastern terminus of the tracks of the St. Louis and Suburban Railway Company, as provided in section five of this ordinance. Failure to comply with this section will forfeit all rights and privileges hereby granted; and said company shall remove from the streets any obstructions which may have been placed therein, and restore said streets to the same condition they were in before the work of laying the tracks was begun. Any failure of the company to comply with the conditions of this section shall constitute a breach of the bond provided in section six hereof, and cause a forfeiture of the rights herein granted.

SEC. 8. All of the provisions of city ordinances numbers seventeen thousand and eight and seventeen thousand three hundred and seventy-five, so far as the same are in force and apply to the present line of the said Manchester Road Electric Railway Company,
52 shall continue in force and apply to the entire line of railway, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

SEC 9. The Manchester Road Electric Railway Company in accepting this ordinance agrees to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force, or which may hereafter be enacted and applicable to its entire line of railroad, or any part thereof.

SEC. 10. In consideration of the rights and privileges hereby granted the said railway company shall be required and agrees to pay into the City Treasury on the first day of January, eighteen hundred ninety-seven, the sum of one thousand dollars, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred five, and the sum of two thousand dollars on the first day of January, nineteen hundred six, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred ten; such payments to be in addition to the annual payments provided for in section six of ordinance number seventeen thousand three hundred and seventy-five, approved January thirty, eighteen hundred and ninety-four; and all of the provisions of said section six of said ordinance number seventeen thousand three hundred and seventy-five concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company shall apply to the entire line of said railway company, including this extension; provided, that, in consideration of the right to build and operate the extensions covered by this ordinance, the total amount of the
53 gross earnings of the company paid to the city shall not be less than five thousand dollars per annum.

SEC. 11. This ordinance, and all rights and privileges and franchises granted hereby, shall cease and terminate January first, nineteen hundred twenty-five.

SEC. 12. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this

ordinance shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

Approved December 28th, 1895.

EXHIBIT "E."

[19,350.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks from its present terminus on Locust street, near Sixth street, and construct a railroad over, along and across certain streets, in the City of St. Louis, and to operate its cars over and upon the tracks of certain other railroads, and to operate the same by electric power, and also authorizing the St. Louis and Meramec River Railroad Company to join with said St. Louis and Suburban Railway Company in said construction, and to maintain and operate its cars over the same tracks and route with electric power, and authorizing said companies to operate ambulance and funeral cars and carry household supplies, and prescribing conditions for the rights hereby granted.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company and the St. Louis and Meramec River Railroad Company, their
54 successors and assigns, are hereby authorized and empowered to extend the tracks of the St. Louis and Suburban Railway Company and construct, operate and maintain their respective lines of railway as follows: Beginning at a point in the south track of the St. Louis and Suburban Railway Company on Locust street, near the intersection of Sixth street, thence eastwardly with a single track curve on Locust street and Sixth street, connecting with the track of the Union Depot Railway Company on Sixth street; thence southwardly, over, along and upon said track of the Union Depot Railway Company on Sixth street to a point where the tracks of the Southern Electric Railroad Company connect with the tracks of said Union Depot Railway Company on Sixth street, near the north side of Pine street; thence south on and along said Sixth street, over and upon the track of the Southern Electric Railroad Company to a point near Elm street with the right to cross all intervening streets and railroad tracks; thence eastwardly with a single track curve connecting with the south track of the St. Louis Railroad Company on Elm street; thence east on Elm street over and upon the south track of said St. Louis Railroad Company to its terminus on Elm street near Broadway; thence east on Elm street with a single track over and across the tracks of the St. Louis Railroad Company on Broadway to the east line of Broadway; thence east on Elm street to the west line of Fourth street with a double track which may be used for such switching and standing of cars as may be incidental and necessary to the regular business of said com-

panies; thence with a single curve track to connect the south track on Elm street with the east track of the People's Railway Company on Fourth street; thence north over and upon said east track of the People's Railway Company to Locust street; thence west with a single curve track on Fourth and Locust streets and across
55 the west track of said People's Railway Company to a connection with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street; thence west over and upon said north track, and across the tracks of the St. Louis Railroad Company on Broadway to a point near Sixth street; thence west and across the tracks of the Cass Avenue and Fair Grounds Railway Company and of the Union Depot Railway Company on Sixth Street to a connection with the north track of said St. Louis and Suburban Railway Company on Locust street near Sixth street; provided, however, that said companies may build, with proper curve connections with their track provided for above on Elm street and with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street near Fourth street, a temporary single track on Fourth street between Elm and Locust streets, east of and as near as practicable to the east track of the People's Railway Company, the east rail of said temporary track to be distant at least ten feet from the east curb of the street; and maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Company have been so reconstructed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company upon the east track thereof as provided above in this section, between Elm and Locust streets; said companies shall be required, and they hereby agree, to remove such temporary track and restore the street to its former condition, to the satisfaction of the Street Commissioner, whenever the tracks of the People's Railway Company are reconstructed as above provided, and said companies are able to begin the operation of their cars on the east track thereof.

If said companies fail to remove such temporary track
56 when they are able to begin the operation of their cars upon the east track of the People's Railway Company, after the tracks of said last named company shall have been reconstructed as above provided, such failure shall work a forfeiture of all the rights and privileges granted by this ordinance and shall constitute a breach of the bond given under the provisions of this ordinance and the city shall remove such temporary track and restore the street at the cost of said companies, such cost to be recovered by the city against the bond given under the provisions of this ordinance.

SEC. 2. Said lines of railroad hereby authorized shall be operated by electric power, either by storage battery, conduits underground, the overhead wire system, through overhead and supplementary ground circuits, or any other electric system. Said companies may erect iron poles to carry overhead wires. The feed wires shall not be less than twenty feet above the surface of the street, said poles

to be placed along the curbs of streets at such distances apart as may be deemed necessary for the safe and proper operations of said railroads, and the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company may also construct, maintain and operate all curves, turnouts, switches, sidings, crossings, crossovers and connections, make all excavations which are reasonably necessary and convenient for the operation of their tracks along the route which they are by this ordinance authorized to use and occupy. The general plan, character and location of the poles shall be submitted to and approved by the Board of Public Improvements.

SEC. 3. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company,
57 their successors and assigns, may run their cars over said route as hereby authorized, at a rate of speed not to exceed ten miles per hour.

SEC. 4. Whenever any of the streets through which the tracks of said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, authorized by this ordinance to be reconstructed, are laid, shall be repaired or reconstructed, said companies shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed to the satisfaction of the Street Commissioner, and said companies shall cause the grade of the roadbed and tracks authorized by this ordinance to be constructed to conform to the grades now or hereafter established of the streets in which said tracks are laid, and at all points where said railroads cross any of the streets of the City of St. Louis.

SEC. 5. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, shall, within sixty days after the approval of this ordinance, file with the City Register their joint written acceptance of all the provisions hereof; and also their joint bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said companies, and each of them, jointly and severally, shall observe all the terms and conditions of this ordinance and all general ordinances of the City of St. Louis now in force, or that may hereafter be enacted in reference to street railways, and that they shall hold the City of St. Louis harmless from the payment of all or any damages and costs which may be established
against the City of St. Louis by reason or on account of the
58 construction, operation and maintenance of said railroads, or either of them, or by reason of the failure of said railway companies, or either of them, to comply with all the terms and conditions of this ordinance; which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond is demanded by the Mayor, and given by said railroad companies, and approved by the Mayor and Council, it shall supersede the

old bond, and thereupon the old bond shall be canceled and returned to the makers, and the new bond filed with the Register of the city.

SEC. 6. Said companies may run United States mail, ambulance and funeral cars, and cars for the transportation of family goods and supplies (excepting coal) over the tracks hereby authorized.

SEC. 7. In consideration of the rights and privileges granted by this ordinance, said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, their successors or assigns, each year, until the expiration of the rights and privileges granted by this ordinance, pay to the Treasurer of the City of St. Louis, for account of said city, the sum of three thousand five hundred dollars per annum, on the thirty-first of December of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

SEC. 8. The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

SEC. 9. This ordinance shall continue in force until February sixth, nineteen hundred thirty-six.

Approved April 5, 1898.

EXHIBIT "F."

[19,392.]

59 An ordinance authorizing the St. Louis and Meramec River Railroad Company to extend its tracks on Sarah street and to construct, maintain and operate its double track railroad along and across certain other streets and highways in the city of St. Louis, and to operate its line of railroad by electric power, and to construct and maintain feed wire lines; and prescribing conditions therefor; also to operate funeral and ambulance cars and to carry household supplies.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Meramec River Railroad Company is hereby authorized to extend its tracks and to construct, maintain and operate a double track railroad, together with all the necessary curves, turnouts, switches, sidings and loops, over, along, across and upon the streets, alleys and public places on the following route, viz.: From the intersection and connection of the double tracks of said railroad on Sarah street, in said city, with the tracks of the St. Louis and Suburban Railway Company on said Sarah street; thence northwardly with a double track on, along and over said Sarah street to Labadie avenue; thence with a single track over and along Sarah street to Ashland avenue; thence west with a single track over and along Ashland avenue to Fair avenue; also continuing the west track at and from the intersection of Sarah street and Labadie avenue westwardly with a single track over and along

Labadie avenue to a point opposite the center line of Fair avenue, extended southwardly to Labadie avenue; thence northwardly with a single track over private property into Fair avenue; thence northwardly over Fair avenue to Ashland avenue; thence westwardly with a double track in Ashland avenue one hundred and forty-six feet four inches, more or less, to a point opposite the center line of Fair avenue extended south from Natural Bridge Road, or such
60 distance as may be necessary to reach the center of Fair avenue, whenever and wherever opened south from Natural Bridge Road to Ashland avenue; thence northwardly over private land, or northwardly so soon as the same shall be open, on, over and along Fair avenue to Natural Bridge Road; thence, if necessary, by opening of Fair avenue, along and on Natural Bridge Road to Fair avenue; thence northwardly on, over and along said Fair avenue to Rosalie street; thence northwestwardly along and over said Rosalie street to Harris avenue; thence along and over Harris avenue to Florissant avenue. And said company, its successors and assigns, is also authorized to cross with its said tracks all intervening streets, alleys and public places, and also the track of any and all other street railroads upon said route.

SECTION 2. Said railroad company, its lessees, successors and assigns, may operate said extension along the route authorized herein, in connection with and as a part of its line of road operated, and to be operated under ordinances of the City of St. Louis, numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, by electricity, either by storage battery, conduits, underground or overhead wire system, through overhead and supplementary ground circuits, or any other electric system; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power, may be erected and placed either between the tracks of said railroad or along the curbs of said streets, as may be directed by the Board of Public Improvements; said poles to be of such form and design and in such portions of the streets as may be required by the Board of Public Improvements, under whose supervision all of said work is done. The location of the said poles and tracks shall be submitted to the Board of Public
61 Improvements for their approval, and shall be placed where designated by said Board of Public Improvements, and such poles and tracks shall at any time thereafter be removed at the expense of said railroad company, to such other portions of the streets occupied by them as the said board may by order direct. And the said railroad company shall have the right to make all reasonable and proper excavations in said streets and all changes and improvements from time to time in its machinery, apparatus and appliances, subject, however, to the approval of the Board of Public Improvements. And the said company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grade of said streets, and the rails and ties of said road shall be so laid that they shall in no way obstruct or interfere with or impede the travel on the streets through which they are laid, and shall at no

point be above the level of the roadway; but said rails shall at all times be on a level with all streets which said railroad crosses or intersects. Before laying said tracks the said company shall cause the streets wherever such tracks are laid to be graded from curb to curb, and to the approval of the Board of Public Improvements. From and after the completion of said extended line of railroad or railway said St. Louis and Meramec River Railroad Company, its lessees, successors and assigns, shall run passenger cars over said railroad every day of the year during the life of this franchise between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its extended line of railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangements of machinery of said company, or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance.

62 SECTION 3. In addition to the rights of said company to erect and maintain feed wires and poles along the line of its railroad, as provided by section two of this ordinance and by ordinances numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, said railroad company, its lessees, successors or assigns, shall have the right and privilege of obtaining electric power for the operation of its said extension from the St. Louis and Suburban Railway Company, by feed wires extending from the power house of said St. Louis and Suburban Railway Company to the said extension, carried on poles, along, over and across such streets and alleys of the said City of St. Louis as may be hereafter selected by said company and approved by the Board of Public Improvements and the location of said poles along such route shall also be approved by the said Board of Public Improvements before said company shall have the right to erect said poles.

SECTION 4. Whenever tracks shall be laid by said company upon any unimproved portion of the said route, said company shall cause the space between its tracks and rails, and for one foot outside thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever such street is improved or paved, constructed or reconstructed, the space between its rails and for one foot outside of its tracks shall be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portions of said street.

SECTION 5. The rate of fare shall not exceed two and one-half cents for children over five and under twelve years of age, nor over five cents for persons over twelve years of age, for single con-

63 tinuous passage either way, between any two points on said railroad, within the city limits, including said extension and line of road now operated by said company within said city limits; or between any point on or to said railroad already operated or to be operated under this ordinance, east of the city limits, and on or

to any point on the St. Louis and Suburban Railway Company's, over which the said St. Louis and Meramec River Railroad Company, its lessees, successors or assigns, now or hereafter may transport its passengers to and from Sixth street; making such transfers and using such transfer tickets as may be necessary.

At the time of filing this acceptance of this ordinance as provided herein, the said St. Louis and Meramec River Railroad Company shall file with the City Register the written acceptance of the St. Louis and Suburban Railway Company of all the provisions of this section.

SECTION 6. Within sixty days after the approval of this bill by the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall agree therein to comply with the provisions of all general ordinances and charter provisions of said city affecting street railroads, that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad, or any part thereof, and shall execute its bond to the City of St. Louis, in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that it will save the city harmless on account of all damages that may be sustained by the city, or by any person, or persons, firm or corporation, during the construction of said extension, or on account of the building of said extension of said road;

and condition further, that said company will faithfully com-
64 ply with all the conditions of this ordinance, and with all the general ordinances and charter provisions of said city affecting street railroads, that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad, or any part thereof. Said bond shall be renewed from time to time whenever requested by the Municipal Assembly, if the security on said bond is found inadequate to the risks, or when requested to do so by the Mayor.

SECTION 7. The work authorized by this ordinance shall be begun within six months from the approval of the ordinance, and shall be completed within two years after the opening of Fair avenue from Ashland avenue to Natural Bridge Road.

SECTION 8. Said St. Louis and Meramec River Railroad Company, its successors and assigns, shall not allow freight cars to be run on any portion of its line within the City of St. Louis, excepting for the transportation of family goods and supplies (excluding coal), and for the use of persons living on or near the line of said railroad. Said company may run cars to carry such family goods and supplies, also United States mail, ambulance and funeral cars over its lines and this extension.

SECTION 9. All the provisions of the city ordinances numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, so far as the same are in force and apply to the present line of said St. Louis and Meramec River Railroad Company as the successor or lessee of the Manchester Road Electric Railroad Company, shall continue in force and apply to the entire line of railroad, including

the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

65 SECTION 10. In consideration of the rights and privileges hereby granted, the said railroad company shall be required, and agrees, to pay into the city treasury, beginning two years after the acceptance of this ordinance, annually, on the first day of July, for the first five years thereafter, one thousand dollars per annum, and for each year thereafter, two thousand dollars per annum up to nineteen hundred and ten; and from and after the year nineteen hundred and ten the provisions of section six of ordinance seventeen thousand three hundred and seventy-five concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company, shall apply to the entire line of said railroad, including this extension.

SECTION 11. This ordinance, and all the rights, privileges and franchises granted hereby, shall cease and terminate January first, nineteen hundred and twenty-five.

SECTION 12. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this ordinance shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

SECTION 13. The St. Louis and Meramec River Railroad Company, in accepting this ordinance agrees to comply with the provisions of all general ordinances and Charter provisions affecting street railroads that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad or any part thereof.

Approved June 10, 1898.

EXHIBIT "G."

66 [21,087.]

An ordinance to amend sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. *St.* Louis" by striking out said sections and inserting new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies em-
67 braced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on
its first trip for the day covered by said report, to be desig-
68 nated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in section twenty-one hundred
69 and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the

terms of any special ordinance, or agreement or contract, nor
70 as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

[19,550.]

An Ordinance to Partially Improve Neosho Street Between Broadway and Michigan Avenue.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause Neosho street, between Broadway and Michigan avenue, to be partially improved by grading, preparing ground for the superstructure, laying on the roadway a sub-foundation of rough rock, twenty feet wide, and placing thereon a course of macadam, with a binding material and a top dressing of gravel, and making all proper connections and intersections with other streets and alleys.

SEC. 2. The sub-foundation of rough rock and the macadamizing shall be of limestone, the binding material shall be of loam, sand or macadam screenings, and a top dressing of gravel shall be used to cover the surface of the roadway.

SEC. 3. The grading shall be done in accordance with the directions of the Street Commissioner. The ground for the superstructure shall be prepared and the roadbed properly formed to a depth of fifteen inches below the intended surface of the roadway. On this roadbed there shall be placed a sub-foundation of rough rock, six inches deep and a layer of broken stone of macadam nine inches deep, which shall be well compacted by rolling, after which the void spaces shall be filled with loam, sand or macadam screenings by
71 flushing with water. On the surface thus formed there shall be spread a covering of gravel. The whole shall then be well rolled.

SEC. 4. The cost of preparing ground for the superstructure, sub-foundation of rough rock, macadamizing, binding material, top dressing, rolling and all proper connections and intersections required, shall be charged as a lien upon the adjoining property fronting or bordering on the improvement herein provided for, and shall be paid by the owners thereof. When said work is completed, the President of the Board of Public Improvements shall compute the cost thereof, and levy and assess the same, as a special tax against each lot of ground chargeable therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf of the contractor, bills of such cost and assessment, accordingly, as required by law.

SEC. 5. The cost of the grading shall be paid by the City of St. Louis, and the sum of three hundred dollars is hereby appropriated on account thereof, payable out of the fund set apart for street improvements.

Approved November 25, 1898.

[19,954.]

An Ordinance to Reconstruct Alley in City Block Number Eight Hundred and Ninety-four.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Board of Public Improvements is hereby authorized and directed to cause alley in city block number eight
72 hundred and ninety-four from Eighteenth street to Nineteenth street, and between Market street and Chestnut street, to be reconstructed by taking up and removing the old pavement, preparing ground for the superstructure, laying a roadway pavement of vitrified paving block on a concrete base and making all proper connections and intersections with other streets and alleys.

SECTION 2. The base shall be a bed of hydraulic cement concrete and the paving shall be the best quality of vitrified paving block, laid on a bed of sand.

SECTION 3. The old pavement shall be removed and the ground for the superstructure prepared to a depth of twelve and one-half inches below the intended surface of the roadway. On the roadbed a base of hydraulic cement concrete, six inches deep, shall be laid; on this base there shall be placed a pavement of the best quality of vitrified paving block. The blocks shall not be less than nine inches nor more than twelve inches long; not less than three and one-half inches nor more than four and one-half inches wide; not less than five inches nor more than six inches deep; they shall be set on edge on a bed of clean, coarse sand of sufficient depth to bring the upper surface of the blocks, after they have been well rammed, to the true surface of the pavement. The joints shall be completely filled with grout, composed of one part best Portland Cement to one part of sand.

SECTION 4. The cost of the foregoing work and all proper connections and intersections required shall be charged as a lien upon the adjoining property fronting or bordering on the improvements herein provided for and shall be paid by the owners thereof. When said work is completed the President of the Board of Public Improvements shall compute the cost thereof and levy and assess the same as special tax against each lot of ground chargeable
73 therewith, in the names of the owners thereof, respectively, in the proportion that the linear feet of each lot fronting or bordering on said improvement bears to the total number of linear feet of all the property chargeable with the special tax aforesaid, and shall make out and certify to the Comptroller, on behalf of the con-

tractor, bills of such cost and assessment accordingly, as required by law.

Approved February 23, 1900.

And thereupon a subpœna in Chancery was issued in said cause, which subpœna, with the marshal's return thereon, is in words and figures as follows, to-wit:

Subpœna.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, set:

In the Circuit Court of the United States in and for the Eastern Division of Said District.

The President of the United States of America to City of St. Louis, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, on the first Monday of June next, at the City of St. Louis, then and there to answer the bill of complaint of St. Louis & Meramec River Railroad Company, a citizen of the State of Missouri, filed against you on the 25th day of April, 1904; hereof fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice
74 of the Supreme Court of the United States, the 25th day of April, 1904.

Issued at office, in the City of St. Louis, under the seal of said Circuit Court, the day and year last aforesaid.

JAMES R. GRAY, *Clerk.*

MEM.—The Defendant to enter its appearance in this suit in the Clerk's office, on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

JAMES R. GRAY, *Clerk.*

I certify that I executed this writ at the City of St. Louis in the above named district, on the 26th day of April, 1904, by delivering a true copy thereof as furnished by the Clerk to Rolla Wells, Mayor of the within named defendant Corporation, the City of St. Louis.

Marshal's Fees.

One service at $2.00	$2.00
Mileage, 1 mile at 6 cents	.06
Total	$2.06

WILLIAM L. MORSEY,
U. S. Marshal, Eastern District of Missouri.

Appearance.

And afterwards on the 2nd day of May, 1904, the defendant entered its appearance, which is in words and figures as follows, to wit:

No. 4988. Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD CO.
vs.
CITY OF ST. LOUIS.

The undersigned hereby enter appearance for defendant in the above entitled cause.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant.

75 And afterwards, on the 1st day of June, 1904, an answer was filed in said cause, which is in words and figures, as follows, to-wit:

(*Answer.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4988.

THE ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY,
Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

Answer.

Now comes the defendant in the above entitled cause and for its answer to the complainant's bill in equity, and showing cause why no injunction or other relief prayed for should be granted, states:

(1.) This defendant denies each and every allegation in said complainant's bill contained, except as hereinafter specifically admitted.

(2.) Defendant admits for the purpose of this cause that the complainant is a corporation created by and existing under the laws of the State of Missouri, having its principal offices and place of business in the locality alleged in the complaint, and states that said complainant is engaged in the business of transporting passengers from one point to another within the City of St. Louis, for hire, on street railways.

(3.) Defendant further admits that it is a municipal corporation of the State of Missouri, situated in the Eastern Division of the Eastern District of said State, and states that it, the said city, is duly organized and possessed of its Charter, under and in pursuance of

the provisions of the Constitution of said State as set forth therein in Article IX, sections 20 to 25 inclusive and amendments thereto.

(4.) Defendant further states that at all times mentioned in the complaint said Constitution (in Article XII, section 20) provided that:

"No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway; without first acquiring the
76 consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

(5.) Defendant admits that under Article X, section 1 of the Charter, it is and at all the times stated in complainant's bill was, empowered, through its Municipal Assembly, by ordinance, to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right-of-way, or regulating and controlling them after their completion; and also had power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a *per capita tax* on the *passengers* transported, or an *annual tax* on the *gross receipts* of such railroad, or on *each car*, and that no street railroad should be incorporated or built in the City of St. Louis except according to the above and other conditions in such Charter, and in such manner and to such extent as provided by ordinance.

And defendant states that it is and was by section two of said Article X of its Charter empowered to regulate the time and manner of running cars, and the rates of fare on street railroads then or thereafter to be built, and the sale of tickets and exchange thereof between the several companies, and to tax the property of street railway companies in such manner as might be provided by law.

And that under section three of said Article X of said Charter it is provided that any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indisposition and surrender thereby all chartered franchises as provided by ordinance.

77 And that by section five of said Article X of said Charter all street railroad companies are and were required to keep the street between the rails and to the extent of 12 inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails to be of the same material as the street itself.

That complainant took all and every franchise, right or privilege granted or conferred by any ordinance subject to all the foregoing powers, and that the provisions in ordinances referred to in complainant's bill requiring the same and similar obligations to repair are of no more effect than if they had been omitted, being the law at all events, and cannot operate as a consideration to the city.

(6.) Defendant further states that acting through its Mayor and Assembly by ordinance, it had (under its Charter, Article III, section 26, clause eleventh) sole power and authority to grant to persons or corporations the right to construct railways in the city, but at all times subject to the right to amend, alter or repeal any such grant in whole or in part, and to regulate or control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles. Defendant states that any and all privileges, rights, franchises or immunities granted or conferred on complainant or its assignors, were knowingly taken subject to the exercise of any of the powers herein set forth whenever defendant saw fit so to do.

(7.) And defendant states that having exclusive and plenary power under the Constitution, statutes, Charter provisions and laws of the State to grant or withhold its consent to the complainant and its assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and
78 such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did when complainant desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainant's bill, and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainant and its assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise of right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a *license fee* for the exercise of such right so conferred on the aforesaid conditions, nor to require payment of a *general property tax on complainant's property.*

(8.) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainant's bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its Charter Article III section 26, clause fifth, by ordinance to *license, tax* and regulate street railroad *cars,* (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21087, approved
79 March 25, 1903, (being the same the enforcement of which complainant seeks to enjoin) which is as follows, to-wit:

[21,087.]

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon

which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be designated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday, or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every Person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October, and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed

guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven
83 shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

(9.) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privileges conferred upon the complainant or any of its assignors; that the obligations assumed by complainant and its assignors in the respective ordinances conferring franchises, rights and privileges were in no sense *license fees* or *license taxes* upon *street cars*, but only conditions under which the city consented that said complainants and their assignors could obtain the valuable right to the use of its streets, and in no way operated to exempt complainant from the imposition of *license taxes* and *fees* for the exercise of their business and the rights conferred by said franchise. On the contrary defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25.00 each year on each street car operated by any street car company and which license fee and tax complainant had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said company upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And defendant further states that when said complainant
83½ accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned, and, that it at all times, and all the assignors of said company, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21,087.

And defendant specially denies that the amount required to be

paid is as alleged by complainant "absolutely required for the purpose of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it and to the proper discharge of the obligations imposed upon it by the several special ordinances" by it set forth or cast a cloud on the title of the properties of complainant, which impairs its credit.

Defendant states that said *license fee or tax* is perfectly lawful and reasonable, and does not interfere with the conduct of complainant's business, but that if complainant is unable or indisposed to continue its said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790*a* of ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of its said franchises and chartered rights, which action complainant has declined to adopt, but on the contrary in open violation of said ordinance 21087, operates street cars and engages in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10.) Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies
84 equally with complainant, and that it agreed on June 16, 1898, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinances 19392 and 19393 and referred to in said complainant's bill, and without which the same would not have become effective, to accept all obligations therein imposed on said complainant, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways: and said respective assignors of complainant entered into similar agreements as a condition permitting them to assign such rights or franchises to complainant, wherein said assignors and each of them agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

(11.) Wherefore, defendant having fully answered prays to be hence discharged without day and that complainant be required to pay its costs herein incurred.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitors for Defendant, the City of St. Louis.

And afterwards on the 2nd day of July, 1904, a replication was filed in said cause, which is in words and figures as follows, to-wit:

Replication.

In the United States Circuit Court of St. Louis, Missouri.

United States Circuit Court, St. Louis, Mo.

No. 4987.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Replicant,
vs.
CITY OF ST. LOUIS, Defendant.

This replicant, the St. Louis & Meramec River Railroad Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendant, the City of St. Louis, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contain- material or effectual in the law to be replied unto, confess-, or avoid-, or traverse-, or deny, is true: all which matters and things this replicant is ready to aver, maintain, and prove, as this Honorable Court shall direct and humbly prays as in and by its said bill it hath already prayed.

JEFFERSON CHANDLER,
Solicitor for Replicant.

85 And afterwards, to-wit: on the 22nd day of December, A. D. 1904, there was filed in said cause a Stipulation, which said Stipulation is in words and figures as follows, to-wit:—

(*Stipulation.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. In Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Stipulation.

It is hereby agreed and stipulated by the defendant, the City of St. Louis, through its counsel, that the preliminary injunction granted by this Court on motion of the United Railways Company, of St. Louis, and the St. Louis Transit Company, be extended on motion of the St. Louis & Suburban Railway Company, and the St. Louis & Meramec River Railroad Company, so as to include the

two last named complainants within the order granting a preliminary injunction restraining the City of St. Louis from enforcing an alleged ordinance No. 21087 against said complainants, the St. Louis & Suburban Railway Company and the St. Louis & Meramec River Railroad Company, or either of them, with same effect as if the order made had included said last named companies and no greater.

CHAS. W. BATES,
WM. F. WOERNER,
Counsel for the City of St. Louis.

And thereupon, to-wit: on the said 22nd day of December, A. D. 1904, there was filed in said cause a Motion for a Preliminary Injunction, which said Motion for a Preliminary Injunction is in words and figures as follows, to-wit:—

(*Motion for a Preliminary Injunction.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri. In Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Complainants' Motion for Preliminary Injunction.

Now come the complainants in the above entitled cause and move the Court to grant a preliminary injunction restraining and enjoining the defendant, City of St. Louis, its officers and agents, from in any wise asserting or seeking to enforce any of the provisions of the alleged ordinance of said City, No. 21087, assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents, and each of them, from in any wise, by suit, or otherwise, asserting or enforcing said alleged ordinance No. 21087 against complainants, until
86 the further order of this Court in the premises.

And in support of said motion said complainants refer to their bill herein, and to the ordinances of the City of St. Louis recited in said bill.

JEFFERSON CHANDLER,
JOHN LIONBERGER DAVIS,
Counsel for Complainants.

And thereupon, to-wit: on the said 22nd day of December, A. D. 1904, the following among other proceedings were had and appear of record in said cause as follows, to-wit:—

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

4988.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Preliminary Injunction.

The Court having fully considered complainant's application for a preliminary injunction, doth order that said application be granted, and it is now

Ordered, adjudged and decreed by the Court, that the defendant, City of St. Louis, its officers and agents, be, and they are hereby enjoined and restrained, until the further order of this Court, from in any wise asserting or seeking to enforce any of the provisions of an alleged ordinance of the said City, numbered 21,087, assuming to impose a tax of one mill upon each revenue or pay passenger carried by the complainants, or either of them, on cars used by them over their street railways in the City of St. Louis, and enjoining and restraining the said City of St. Louis, its officers and agents, and each of them from in any wise, by suit or otherwise, asserting or enforcing said alleged ordinance numbered 21,087 against the complainants, or either of them.

ELMER B. ADAMS, *Judge.*

87 And afterwards, to-wit: on the 24th day of November, A. D., 1905, there was filed in said cause Testimony for complainant, which said testimony for complainant is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. In Equity.

4988.

St. Louis & Meramec River Railroad Company, Complainant,
vs.
City of St. Louis, Defendant.

(*Testimony.*)

Testimony on behalf of Complainant in the above entitled cases taken by consent of parties before James R. Gray, as Special Examiner, at his office Room 342 Custom House Building, Eighth-Ninth-Locust-Olive Streets, St. Louis, Mo., beginning at 10:30 o'clock in the morning of Tuesday, the seventh day of November, A. D. 1905. It being agreed by the parties that this testimony may be used in either of the above entitled causes:

Appearances: Jefferson Chandler, Esq. for Complainants. W. F. Woerner, Esq., for Defendant.

Testimony.

E. P. Sommers, a witness on behalf of the Complainants, after being duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Chandler:

Q. Mr. Sommers, will you state your full name please?
A. Edgar P. Sommers.
Q. What relation, if any, have you to the St. Louis & Suburban Railway Company?
A. I am Secretary and Treasurer.
Q. How long have you been secretary and treasurer?
A. About three years.
Q. What relation, if any, do you have to the St. Louis & Meramec River Railroad Company? Or Railway Company? I have forgotten which?
A. I am not an officer of that company.
Q. Do you know anything personally of its business?
A. Yes, sir.
Q. Do you know anything of the origin of the St. Louis & Suburban Railway Company system?
A. Yes, sir.
Q. State what its origin was?

Mr. Woerner: In order to be able to intelligently determine whether objection is to be made to this testimony or not I will request

counsel for the Complainant to state the object of the testimony, and what he proposes to prove by this witness.

Mr. CHANDLER: Well, I have no objection to that. The Bill in the Suburban case charges that the present system originated by possession of what is known as the narrow gauge system, beginning and ending wholly outside of the City of St. Louis; and it's that allegation that I want to prove.

Mr. WOERNER: I object to that line of testimony on the ground that it is immaterial, irrelevant and incompetent to the issues that are made in this case; also because such matters can be proved
88 only by competent testimony so far as the Defendant—City of St. Louis is concerned, to-wit: the ordinances; even if such testimony were otherwise admissible.

A. It was first built as the old steam narrow gauge road and started just west of the city limits, which at that time were a little west of Grand avenue. This road, or rather that narrow gauge road had changed hands a number of times. After that there was a cable line, the St. Louis Cable & Western, was constructed, and ran out as far as Grand and Olive, to Grand and Olive, or Vandeventer and Morgan; this road was operated at a loss and went into the hands of a receiver. About 1886, I think it was or somewhere around there, they started the construction on that road. It was operated for five or six years at a loss. Then a company was organized, known as the St. Louis & Suburban Railway Company, and bought up this Cable & Western and the narrow gauge road; after that the St. Louis & Suburban Railway Company reconstructed the whole system; changed it from a narrow gauge steam railway and cable road to an electrical one, and so operated it up to the present time.

Mr. WOERNER: I now move that the answer of the witness be stricken out for the reason given above in objecting to his testimony, and for the further reason that it appears that most of what witness has stated should have been proved by ordinances which would have been binding on the City of St. Louis; for the further reason that most of what he has stated should be evidenced by writing, and not subject to the verbal testimony of the witness; also because all that has been stated is immaterial to any legal issue raised in this case.

Q. What was the Western terminus of the Narrow Gauge System of which you have spoken?

A. The steam narrow gauge road?

89 Q. Yes.

A. Florissant; the town of Florissant.

Q. State whether or not any portion of that line at the time you spoke of was laid within the limits of the City of St. Louis?

A. The narrow gauge? Yes, sir; it was; it started a little west of Grand avenue.

Q. I understood you to say the limit on that side was Grand avenue?

A. Yes, sir; it was.

Q. Then state at the time of its origin whether or not any part of the line was inside the city?

A. No, sir; it was not.
Q. At what time did the reconstruction that you speak of occur?
A. About 1890.
Mr. WOERNER: Well, now, if I may interrupt you—you don't mean to say that Grand avenue was the western limit of St. Louis in 1890; do you?
A. No, sir.
Q. Do you know what time the reconstruction occurred?
A. About 1890, I think.
Q. Describe the system of the St. Louis & Suburban Railway Company as it now exists?

Mr. WOERNER: I object to the question for the same reason as first above given.

A. Do you mean as to its operation, or——
Q. Its geographical existence—where does it begin and where does it end and over what streets does it pass?

Mr. WOERNER: I object for the reasons first above given; and also because the ordinance, the validity of which is here in question being Number 21087, does not purport to impose any tax or license fee on the Complainants, or either of them, for any passengers carried outside the limits of the City of St. Louis, but is confined in its operation to cars operated in the City of St. Louis; therefore whether said road extends beyond the city limits, and if so to what extent and whither, is immaterial in determining any of the issues in this case.

A. It starts at Fourth and Elm and runs north on Fourth to Locust, west on Locust to Thirteenth, over Thirteenth to Linden, over to Fourteenth, north on Fourteenth to Wash, west on Wash to Morgan, west on Morgan to 3919 Morgan, and from there on private right of way to Suburban Gardens, thence north to Florissant and Ferguson. The Union Avenue line runs from Forest Park to Walnut Park, and from there runs over Clarendon avenue and the Suburban's right of way to Union avenue; and over Suburban right of way north on Sarah street to O'Fallon Park; and south over Suburban right *right* of way on Sarah street to Manchester avenue, west on Manchester avenue to Maplewood Loop, thence west over private right of way and on public roads and streets of St. Louis county to the City of Webster and the City of Kirkwood and on to Meramec Highlands. Another line runs from 6100 Maple avenue, the city limits, over public roads to 66th street, south on 66th street and right of way through the town of Clayton to Brentwood, and from Brentwood through Webster and Kirkwood; and also from Brentwood east over right of way to Forest Park; also another line from Ferguson Junction just north of Ramona Park to the town of Ferguson.

Mr. WOERNER: I now move that the answer of the witness be stricken out in so far as it refers to all portions of said road outside of the limits of the City of St. Louis.

Q. How many miles of the system that you describe lie within the

City of St. Louis, and how many miles lie outside of the City of St. Louis?

A. I don't believe I can answer that; I can give you the total mileage.

Q. Just answer as far as you can?

A. The total?

91 Mr. WOERNER: I want to object on the ground that such information can only be evidenced by the ordinances authorizing said railways to operate their roads and cars and not by verbal statements of this witness.

A. The total mileage is a hundred and four miles.

Q. Can you in the future leave with the Examiner the number of miles of said road outside the City?

A. Yes, sir.

Q. And will you do that?

A. Yes, sir.

Mr. WOERNER: I object to the witness leaving anything with the Examiner hereafter, unless such matter be first presented to counsel for defendant and his consent obtained thereto.

Q. What was the extent of the mileage of the system at the date of the Ordinance No. 21,087?

A. In miles? About 104 miles.

Q. Same as it now is?

A. Yes, sir.

Q. What is the longest and what is the shortest distance a passenger is carried by the Suburban System for five cents?

A. Eight miles for five cents, and eight miles for 2½ cents; that's the longest.

Q. What's the shortest? Any distance that a passenger wants to go?

A. Yes, sir.

Q. Any distance short of that that a passenger wants to go?

—. Yes, sir.

Q. What is the financial condition of the St. Louis & Suburban Railway Company?

Mr. WOERNER: I object to this question on the ground that what the financial condition of the St. Louis & Suburban Railway Company is has nothing to do with this case; and on the further ground that said question is irrelevant, incompetent and immaterial; and because the validity or invalidity of the ordinance in question

92 in this case cannot be determined by the financial condition of any particular road, for if the legality of said ordinance could be determined by such matters it might be legal as to some roads and illegal as to others, and it might be valid one year and invalid the next year; and for the further reason that the courts will not consider the reasonableness or unreasonableness of any ordinance by fluctuating circumstances, or by evanescent conditions of any one or more roads; and because the legality of any ordinance cannot be made to depend on whether the road is making money or losing

money; and for the further reason that if said ordinance could be made to depend on the financial condition of the St. Louis & Suburban Railway Company, no license or tax could be charged on a losing company, whereas it might be charged against a successful company; for all of said reasons I object to the question asked.

A. The road has always been operated at a loss.

Mr. WOERNER: I move that the answer of the witness be stricken out for the reasons given in the objection made to the question asked; and because whether said road was operated at a loss or not must be determinated by the figures of income and expense and not by a conclusion of the witness as to the fact.

Q. Was it, at the date of this ordinance that you speak of?

M-. WOERNER: Same objection.

A. Yes, sir.

Q. State whether or not at the date of the ordinance you speak of, to-wit: No. 21,087, the said System had issued any stock or bonds.

Mr. WOERNER: Same objection.

(Question withdrawn.)

Q. State whether the System has outstanding mortgage bonds, and if so, how many?

93 Mr. WOERNER: I object on the ground that it is immaterial what indebtedness of complainant is and whether they have got any mortgage bonds out or other debts, for the reason heretofore given in the objection to the next two preceding questions; and for the further reason that if there is any such indebtedness, it is postponed to the payment of the taxes and license fees called for in Ordinance No. 21,087; and the Suburban Road or any other Company cannot affect the right of the City of St. Louis to pass ordinances binding on them by any bonds or other obligations that they may enter into.

A. Yes, sir; seven and a half million dollars.

Mr. WOERNER: I now move that the answer of the witness be stricken out for the reasons given in the objections to the question asked; and for the further reason that such information must be obtained by documentary evidence, not the verbal statement of this witness, it being impossible for him to know of these things independent of the records of the company.

Q. What is the amount of its capital stock?

Same objection.

A. Seven million five hundred thousand dollars.

Q. Has the authorized capital stock been issued?

A. No, sir; four and a half million has been issued.

Q. Then the authorized stock is seven and a half millions, they have issued bonds to the extent of seven and a half million?

A. Yes, sir.

Q. And your capital stock consists of four and a half million actually put in?

A. Yes.

Q. What were the proceeds of the stock and bonds used for, for any purpose?

A. Constructing and reconstructing the system.

Q. Has there, or has there not been any dividend declared on the stock?

94 Mr. WOERNER: I object for the same reasons given in the objecting to prior questions, that these matters are of no concern in determining the validity of this ordinance; that whether this road makes money or loses money cannot in any shape, manner or form bear on the issue whether the City of St. Louis has a right to pass the ordinance in question, or whether said ordinance is valid or not.

A. No dividends have been paid.

Q. State whether or not the entire proceeds of the paper issued have been devoted exclusively to creating and benefiting the System.

Objected to for the same reasons heretofore given and because the answer must be a conclusion on the part of the witness and not a statement of facts.

A. They have been used exclusively for the construction work, reconstruction and betterments of the system.

Q. What charges does the System make for carrying passengers?

A. Five cents for adults; two and a half cents for children.

Q. State whether the fund—the fare charged—is adequate to meet the obligations of the System?

Mr. WOERNER: I object to the question as immaterial, irrelevant and incompetent; as a conclusion on the part of the witness; and as not bearing on any issue in this case; also because said charges have been fixed by agreement between the Complainant and the City of St. Louis in other ordinances of acceptance of the benefits and privileges conferred by the City of St. Louis upon Complainants in granting permission for operation of the roads.

Q. State whether the fund—the fare charged—is adequate
95 to meet the obligations of the System, thus described in the Bill of Complaint in this case in this language: "Required for the purposes of making extensions and procuring additional equipments essential to the proper conduct of the service assumed by it, and to the proper discharge of the obligations imposed upon it by the several special ordinances hereinbefore set forth."

Mr. WOERNER: I object on the ground that counsel refers to several special ordinances without stating what the ordinances are.

A. The fare as charged is not adequate to meet the obligations of the road.

Mr. WOERNER: I move that the answer of the witness be stricken out because it is a conclusion on his part without our being enabled to

determine how his conclusion was brought about; because it is not a statement of any facts and because the same is irrelevant, incompetent and immaterial upon the grounds hereinbefore assigned in objecting to said question; and for the further reason that whether said fare is adequate or not does not make any difference as to the right of the City of St. Louis to pass the ordinance in question; and for the further reason that the answer upon its face carries its own refutation, because it is shown that the fare for adults is five cents and the amount of the tax is only one mill per revenue passenger, the obligation to pay said taxes and licenses fees being paramount to any other obligations of said Company.

Q. To what extent is it paramount, Mr. Woerner?

Mr. WOERNER: To the extent that you have got to meet your taxes and license fees or you cannot operate the cars.

Mr. CHANDLER: No matter what amount you may choose to assess; you may as well meet this issue squarely.

96 Mr. WOERNER: I decline to meet the question because it is more properly addressed to the Court than to counsel; and for the further reason because said ordinance requires the payment of one mill only per passenger, whereas the fare is five cents per passenger, which shows that said company must have ample funds with which to meet the obligations of this ordinance; and for the further reasons that under the charter of the City of St. Louis if the said Company cannot meet its just and lawful obligations it is authorized to surrender its charter and quit business.

Q. Did this condition prevail at the date of ordinance No. 21,087?

Mr. WOERNER: I object to this question for the reasons heretofore stated; and also because the witness has already testified that the road always was operated at a loss ever since its organization, and therefore, according to his view of looking at the thing, they never should have paid any taxes of any kind to anybody.

Q. Mr. Stenographer, just change that question to make it read "at and prior to the date of the ordinance."

Mr. WOERNER: I object to any such interlineation of the question as will make my objection without force; ask the question over again if you wish to. I wish the record to show the question as originally asked by Mr. Chandler.

(Here follows some colloquy between counsel; at the conclusion of which the question is withdrawn.)

Q. State whether this condition prevailed at and prior to the enactment of ordinance No. 21,087?

Mr. WOERNER: I wish now to remove my objection that I made to the question that was withdrawn.

97 A. It did.

Q. State under what circumstances and for what reasons the fare of five cents for adults and two and a half cents for children is collected.

Mr. WOERNER: I object to the question on the ground that the reasons are utterly immaterial and have noth- to do with the validity of the ordinance in question.

A. It is done by City Ordinance; we are allowed to collect five cents for adults and two and a half cents for children.

Mr. WOERNER: I move that the answer of the witness be stricken out because such testimony must be shown by the ordinance itself, if such is the fact.

Q. Do you know whether such charge is the result of any contract between the City and the Suburban System?
A. Yes, sir.

A. I move to strike out the answer on the ground that any such contract would have been in writing and could only be proven by such writing or ordinance, and not by verbal testimony; and for the further reason that the answer of the witness is his conclusion on the situation and not a narration of any fact.

Q. Are you familiar with the financial and contractural relation between this System and the City?
A. Yes, sir.
Q. In what capacity do you act for the System, if at all?
A. As secretary and treasurer; and auditor.
Q. Secretary, treasurer and auditor?
A. Yes, sir.
Q. In the exercise of the authority of these several offices do you have personal knowledge of outstanding contract made by the System with the City?
A. Yes, sir.

Mr. WOERNER: I want to ask the witness if these contracts and agreements which he has reference to are not in every instance in writing?

98 Mr. CHANDLER: I object to the question as out of time and as a question which should be deferred to the cross examination, if answerable at all.

Q. The answer states here, Mr. Sommers, that ordinance No. 21,087 is applicable to persons engaged in transporting passengers; do you know whether there is a system of transporting passengers in the City of St. Louis by hacks and coaches.
A. Yes, sir.
Q. Is there such a system?
A. Yes, sir; there is.

Mr. WOERNER: I object to the question as irrelevant, incompetent and immaterial and because the ordinance in question does not refer to any hacks, and if it did, such fact would not bear on any issue in this case.

Q. Do you know whether there are steam railroads operating between different points in the City of St. Louis?

Same objection.

A. There are a number of them, of the steam railways, which engage in that business.

Q. What are they?

Same objection.

A. The Wabash, the St. Louis, Kansas City and Colorado; the Missouri Pacific; and the St. Louis, Iron Mountain and Southern.

Q. Do you know to what extent there has been, if at all, automobile arrangements made for the carrying of passengers during the life of this ordinance and since and prior to the enactment of the ordinance?

Mr. WOERNER: I object to the question as irrelevant, incompetent and immaterial; and on the further ground that automobiles are taxed for the privilege of running by separate ordinances
99 from the one here in question, just as heavily as street cars are.

A. There has been an automobile line to carry passengers.

Q. Within the City of St. Louis?

A. Within the City of St. Louis.

Q. Do you know whether such traffic in passengers was in competition with Complainant's System?

Mr. WOERNER: I object for the reasons heretofore given as being irrelevant, incompetent and immaterial.

A. It was in competition.

Q. Do you know whether it operated to diminish the revenue of Complainant's System?

A. It did.

Q. Do you know whether steam railways carrying passengers in the City as you have stated above operate *the revenue of Complainant's System?*

A. It did.

Mr. WOERNER: Same objection.

A. I do.

Q. Do you know whether such traffic in passengers by steam railways operated to diminish the revenues of Complainant's System?

Same objection.

A. I do.

Q. Did it or did it not?

A. It did.

Q. I ask you the same question with reference to hacks?

Same objection.

A. It also diminished the revenues.

Q. I will get you to state whether Complainant's System has paid to the City of St. Louis from time to time when due all the
100 money called for by any ordinances of the City of St. Louis, except this one mill tax?

A. Always paid them on time.

Q. In full.
A. In full.
Q. Do you know whether Plaintiff's System has kept and performed all its contracts with the City with respect to the payment of money and improvements of streets in the City that have devolved upon it by ordinance?

Mr. WOERNER: I object to the question as calling for a conclusion on the part of the witness and as immaterial, irrelevant and incompetent.

A. It has always met its obligations.
Q. In every respect?
A. Yes, sir.
Q. Does this testimony and this answer apply equally to the St. Louis & Meramec River Railroad Company?
A. It does.
Q. What per cent. on the gross earnings of the two systems is the charge for children; what per cent. of the gross earnings of the system is derived from the fares received for children?
A. I cannot state that exactly just now; I don't know that I understand what you want.
Q. Well, I will put it this way; what per cent. of the gross earnings derived from carrying children is exacted under Ordinance No. 21,087?

Mr. WOERNER: I object on the ground that this is a conclusion on the part of the witness and is not proper to be asked; the proper way to get at it is to ask the fare that is charged for minors, or rather children, and let that be computed by the Court; and on the further ground that the witness has already stated that part.
Q. I only want to save the Court the arduous labor of that computation.
Mr. WOERNER: I don't think it will be any arduous labor.

101 Q. Well, answer the question.
A. Four per cent.
Q. And what per cent. is exacted for the carrying of adults under said ordinance?

Mr. WOERNER: Same objection.

A. Two per cent.
Q. Is or is not said exaction under said ordinance a violation of the contract with the City to charge five cents for adults and two and a half cents for children?

Mr. WOERNER: I object to the question on the ground that it is clearly an improper question for a lawyer to ask any witness because it so palpably calls for a conclusion of law on the part of the witness; and because said matter is purely a question of law and does not call for any fact; and for the further reason that the Court, as it sits in judgment in this case, is competent to pass on said question without being assisted in its conclusions by the opinions of a lay witness.

A. It is in violation of the contracts.

Q. This bill contains this allegation: "That among the lines of street railway in said City of St. Louis owned and operated by the St. Louis & Suburban Railway Company, are lines constructed, maintained and operated under and by virtue of the provisions of Ordinance No. 19,350 of said City of St. Louis, approved, April 5, 1898." Do you know whether that is a fact or not?

A. It is a fact; they were built and operated according to the franchise.

Q. Do you know whether the right to charge and collect five cents for adults and two and a half cents for children is necessary for the continued operation of the road of both of these Systems?

Mr. WOERNER: I object to the question for the reasons heretofore given in objecting to similar questions; also for the further
102 reason that the answer involves a conclusion on the part of this witness and does not call for any facts; and for the further reason that whether said charge and collection is or is not necessary doesn't cut any figure in this case and cannot be determined by verbal testimony; and that the Court will not declare this ordinance valid or invalid for anything that may be stated as the opinion of any one or more men, but will determine such question solely from the provisions of the ordinance itself.

A. It is necessary; for both Systems. And more too, if we could get it.

Q. State what effect, if any, the construction, reconstruction and equipment of Plaintiff's System has had on the development of the city along its lines?

Mr. WOERNER: I object on the ground that it has nothing to do with the merits or issues raised in this case; and also because both of Complainants never pretended to be charitable institutions acting for the benefit of the citizens of St. Louis; and because they are and always were corporations purely for the purpose of making money for themselves; and whether or not they succeeded in so doing doesn't concern the municipal authorities.

A. When they started with the Narrow Gauge——

Q. The question is whether it has occasioned the investment in property that has brought additional revenues to the City and been influential in developing and enriching the City.

Mr. WOERNER: I offer the same objection.

A. It has developed the city all along its lines and increased the value of property; where at first it was nothing but frame houses, now it is thickly settled portion of the City with fine residences.

103 Q. Has is operated to increase the taxable revenues of the City?

Mr. WOERNER: I offer the same objection; the same as to the preceding questions; it is a matter utterly indifferent to the issues

in this case, what the indirect consequences are of the operation and construction of these roads.

A. Yes, sir; it has.

Q. You may take the witness.

Cross-examination.

By Mr. WOERNER:

X Q. I don't believe I have any questions to ask this witness. Oh, yes, there is this question. Mr. Sommers, is it a fact that this ordinance No. 21,087 as you understand it is an amendment of the prior ordinance which requires a fixed tax of $25.00 as a license fee for running each car?

Mr. CHANDLER: I object as a matter not in issue at all. There is no ambiguity about the ordinance to be helped out by some prior enactment.

X Q. Do you understand that this ordinance is in place of the prior ordinance which made a fixed charge on each car?

Same objection.

A. Yes, sir.

X Q. Now, I want to ask you, whether both of your companies didn't pay that $25.00 per car tax every year so long as you were running these cars?

Mr. CHANDLER: I object because there is no such issue pending here. There is no ambiguity to be cleared up by any former action of the Company, and the contract to collect five cents and two
104 and a half cents cannot be broken down by any prior action of Plaintiffs and cannot be affected by these Companies on the stand.

X Q. They paid up every year $25.00 a car until the passage of this present ordinance?

A. Yes, sir.

X Q. And that sum was not paid under protest, was it?

A. No, sir

Mr. CHANDLER: Just wait a moment: I want to object to the question because there is no foundation laid for the showing of any knowledge of the witness on that subject.

X Q. That's all.

At this point the further taking of testimony herein was adjourned until tomorrow (Wednesday) morning at eleven o'clock a. m., November 15th, 1905.

11 O'CLOCK A. M., WEDNESDAY, *November 15th*, 1905.

At this time the further taking of testimony was resumed, the appearances for the respective parties hereto being as on yesterday.

Direct examination of witness Sommers continued by Mr. CHANDLER:

Q. How much of the System's railway mentioned in your evidence is over private right of way?
A. In the City of St. Louis?
Q. Yes.
A. Twelve miles and forty-four thousandths. (12.044.)
Q. How much is over private right of way and streets?
A. Well, over the streets—there's 28.772 miles.
Q. That includes the part of the line over streets and the part over private right of way?
105 A. No, that's just on the streets alone; I will give you the total in a minute. The Tracks on both streets and right of way would be 40.816 miles.
Q. And on the streets only exclusive of the right of way?
A. 28.772 miles.
Q. And on the private right of way?
A. 12.044.
Q. State whether or not the acquisition of this private right of way — from the City or from independent owners?

Mr. WOERNER: I object to the question as going into irrelevant matters that have nothing to do with any of the issues in this case.

A. The private right of way was from independent owners and not from the City.
Q. State whether or not the acquisition of that private right of way was expensive or not?

Mr. WOERNER: I object to the question on the ground that the answer called for will be entirely immaterial to any issue in this case, it being utterly immaterial so far as the validity of this ordinance is concerned what price was paid by the Complainant for the acquisition of any private right of way or whether said price was big or little or whether they acquired it by gift, or how they did acquire it.

A. To the best of my knowledge, it was.
Q. Do you know at what time the private right of way was acquir d from Grand avenue east?

Mr. WOERNER: If there is any such—better add that.

A. The private right of way from Grand avenue east?
Q. Do you go over any private right of way from Grand avenue east—does either System?
A. Yes, sir.
106 Q. When was the private right of way acquired in the first instance from the owners?
A. Very recently—the right of way east of Grand avenue; it's only about 150 feet.
Q. When was the private right of way west of Grand avenue acquired?
A. The majority of it in the years 1871, 1872 and 1873.

Q. Do you remember the date when the "scheme and charter" went into effect?

A. No, sir.

Q. Assuming that the Scheme and Charter went into effect in 1876, was the acquisition of this private right of way west of Grand avenue before that date?

A. Before that date; yes, sir.

Q. You say it was?

A. Yes, sir.

Q. What company operated over the private right of way previous to the enactment of the Scheme and Charter in 1876?

Mr. WOERNER: I object to the question because it has nothing to do with this case.

A. To the best of my knowledge it was the St. Louis & Florissant Railroad, the West End and Narrow Gauge, and the St. Louis Central & Western.

Q. Were the railroads that you have just mentioned a part of the private System, the two Systems?

A. Yes, sir.

Cross-examination.

By Mr. WOERNER:

X Q. Mr. Sommers, how many miles of tracks of these companies are there in the City of St. Louis on the public streets and highways?

A. 28.772.

X Q. Does that include cars going both ways?

A. Yes, sir, single track.

X Q. How much of that is east of Grand avenue, can you
107 tell?

A. No, I cannot tell; these figures have been taken from the present City limits.

X Q. Well a large portion of it is, anyhow, isn't it?

A. Quite a large portion of it; yes, sir.

X Q. And of all the miles of tracks of these two companies east of Grand avenue you have a private right of way over about 150 feet only; that's correct?

A. Yes, sir.

X Q. An- that was only acquired a short time ago in order to enable your tracks to run over one block and make a shorter cut?

A. Yes, sir; that is east of Grand avenue.

X Q. How many cars do you run from, say, Fourth streets to Sarah street, at, say from seven o'clock to nine o'clock in the morning?

A. I cannot answer that; that's out of my department. You would have to take that up with the operating department.

X Q. Do you know what your schedule is as to the intervals between cars?

A. No, sir.

X Q. You know they run the cars about a minute apart, don't you?

A. I don't.

X Q. You do know that every one of these cars is crowded between those hours so that people cannot find seats, don't you?

A. What hours?

X Q. The hours I mentioned—from seven to nine o'clock in the morning, say.

Mr. CHANDLER: I object to the question on the ground that there is no charge made by the defendant in these cases as to inefficient management or service.

A. My office is at De Hodiamont and I cannot say what is going on down town.

X Q. Don't you know that your cars are crowded to overflowing in the evening with people going home and that you run
108 your cars just as fast as you can—what I mean is, at as short intervals as possible in order to accommodate the traffic?

A. I don't know.

X Q. Now, Mr. Sommers, I am asking you as a fair-minded man if you don't know that people have to stand in your cars all the time on account of the volume of the traffic?

Mr. CHANDLER: I object on the ground that there is no allegation to support the question and on the ground that witness has repeatedly answered that he does not know.

X Q. Well, what do you say?

A. My office is in De Hodiamont and I don't know what goes on down town.

X Q. Don't you sometimes leave the down town district at some time in order to get home?

A. No, sir.

X Q. You never do?

A. No, sir.

X Q. You never go home from seven to nine o'clock in the evenings?

A. No, sir; I go from De Hodiamont east on the cars.

X Q. Well, now are there not some occasions when you have been down town at that time of the day and have left there about that time to go west?

A. Yes, sir; once or twice.

X Q. Well now, I ask you, Mr. Sommers as a fair-minded man, whether people are not compelled to stand in your cars for lack of seats; I am not criticising your Company; I am asking you whether you don't know that traffic is so great that they cannot furnish cars to accommodate the people?

Mr. CHANDLER: I object to the question because there has been no foundation laid for knowledge on the part of the witness and because the witness has repeatedly answered that he doesn't know.

A. That's a question I cannot answer because I don't know.

109 X Q. Do you know how many people you carried last year?

A. Yes, sir.

X Q. I wish you would state what that number is?

A. Do you mean in the city alone or in the whole system?

X Q. Yes, in the city; and I am now referring to revenue or pay passengers.

A. Adult passengers—21,228,786; children, 1,677,573; total of 22,906,359.

X Q. For what year is that?

A. 1904.

X Q. Have you got the figures for 1903?

A. Yes, sir.

X Q. Just give those please.

A. Adults, 15,188,352; children, 1,251,523; total, 16,439,875.

X Q. Have you got the figures for the preceding year, 1902?

A. No, sir.

X Q. Have you got the figures for this year as far as you have taken any?

A. No, sir; I didn't have time to make those up.

X Q. Have you got any means of revenue besides the carrying of passengers?

A. We have.

X Q. What are they?

A. Rental of land and buildings; rental of freight privileges; and advertising, car advertising.

X Q. How large are your receipts from these sources besides your fares for passengers?

A. About 2 per cent.

X Q. I mean in figures?

A. I cannot give you those; I haven't those figures with me.

X Q. You mean that your receipts from these sources in proportion to the collection of fares amounts to about 2 per cent.?

A. Yes, sir.

X Q. How many cars do you operate, or did you operate last year?

A. About 110 cars a day.

110 X Q. And how many trips do they make?

A. I cannot answer that; I don't know.

X Q. Can you tell about?

A. Why, each conductor would average about six trips.

X Q. A day?

A. Yes, sir.

X Q. Have you got the figures showing how many trips you made during the year 1904?

A. No, sir.

X Q. Or any other year?

A. No, sir; I haven't those figures.

X Q. Now between Fourth street and Sarah street—all the cars of the Suburban run over those tracks do they not?

A. No, sir.

X Q. Which don't?

A. Union Avenue; Fairmount Avenue; and the line running to Clayton.

X Q. I mean those running within the City of St. Louis?
A. No, sir. The Union Avenue line.
X Q. Have you got any cars that operate wholly without the City of St. Louis?
A. Yes, sir.
X Q. What line?
A. The line known as the Brentwood Division; and the Florissant Division; and the Ferguson Division.
X Q. The Brentwood Division. They never come within the limits of the city?
A. No, sir; those that I mentioned don't.
X Q. And they are not affected by this ordinance, are they?
A. So I understand.
X Q. They are not included within the returns that you gave as of passengers carried in the City of St. Louis?
A. No, sir.
X Q. How much do you pay out in the way of interest on bonds?
A. $375,000.00.
X Q. Per year?
A. Yes, sir.
X Q. How much have you paid out for extensions of your roads in the county within the last, say, ten years?
A. I cannot answer that; I don't know.
111 X Q. How much have you paid out for extensions of your road, or any of them, within the City of St. Louis?
A. I cannot answer that; I haven't the figures with me.
X Q. How much have you paid out for construction and reconstruction?
A. Within what period of time?
X Q. Within any period that you can fix?
A. About three and a half to four million dollars.
X Q. What was that for and within what time?
A. I should say within the last 2½ to 3 years for reconstruction of lines.
X Q. Within the City of St. Louis?
A. City and County together.
X Q. I don't care about the county at this time; how about the city?
A. I cannot answer that.
X Q. Your Company has paid out a great deal of money in laying out these various lines in St. Louis county, didn't it?
A. Yes, sir.
X Q. Do you know how much?
A. No, sir.
X Q. You made these various extensions out into thinly settled region—at least as compared with city itself—with the idea of developing that country and ultimately obtaining the business, didn't you?
A. Yes, sir.
X Q. In every case of that kind, the road loses money at first, doesn't it?

Mr. CHANDLER: I object to the question unless the witness has personal knowledge.

A. So far as I know they do, yes, sir.

X Q. The idea is that ultimately when the sections build up they can carry the people who go to and from those districts, isn't it?

A. That's a fact.

X Q. And so long as the companies are doing that sort of thing and looking to the future in that way and extending their
112 lines to unsettled districts, it costs them more money than they make?

A. Yes, sir.

X Q. And that's what you've been doing?

A. Yes, in some places; yes, sir.

X Q. And that's why your company hasn't been paying any dividends?

A. No, sir.

X Q. You expect to look forward to the time when you will pay dividends don't you, by reason of this extension you are getting don't you?

A. Yes, sir.

X Q. And still notwithstanding the fact that you have been paying out these large sums of money and extending your lines into the country with the idea of discounting the future and are paying out these vast sums by way of interest on your bonds, still you state that you cannot pay the license tax that is called for by this ordinance on each car; is that right?

A. Yes, sir.

X Q. Was it your idea that the license tax or license fee must be postponed to all these other obligations?

Mr. CHANDLER: I object to the question as mere argument on the part of the counsel and as not calling for a fact on the part of the witness.

A. I think the mill tax for each passenger is unreasonable.

X Q. I didn't say anything about the one mill per passenger or anything of that kind; and I now move to strike out the answer as not responsive to the question.

A. We always have paid our license right along up to this time.

X Q. Why did you pay it?

Mr. CHANDLER: I object; this witness can only speak for himself but not for the motives of the companies.

X Q. Why did you pay it?

A. Because the vouchers were approved for payment.

X Q. Is that the only answer that you will give?

A. Yes, sir.

113 X Q. When you say that you have paid it, you mean the $25.00 tax per car, don't you?

A. Yes, sir.

X Q. And as I understand you the only reason you quit paying your license fee is because this is larger than $25.00 per car?

Mr. CHANDLER: I object as the witness is not authorized to speak for the company.

A. The vouchers were not approved and I didn't pay them.
X Q. Is that the only answer that you will give?
A. Yes, sir.
X Q. Do you know of any reason why the $25.00 tax was paid and not the tax called for by the present ordinance, except that the latter will amount to more than the former?

Mr. CHANDLER: I object as there is no issue raised as to the $25.00 tax; further, there is no ambiguity in the contract permitting complainants to charge the amount mentioned in the testimony; and there is no evidence to explain the contract needed, and therefore this is wholly immaterial.
Mr. WOERNER: In response to that statement from Mr. Chandler I want to say there is no question here as to any contract but only as to a tax on cars; neither has this anything to do with the five cents fare that the complainant is charging, the tax itself being determined by the amount equivalent to one mill per passenger carried on each car, and that the tax is not on the fare charged but is on the car; and moreover that if the complainant's position were correct that the original ordinance is a contract, that then the prior dealings between the parties would be evidence showing the interpretation put by the parties themselves on such alleged contract.
Mr. CHANDLER: I move to strike out this last so-called objection on the ground that it is mere argument.

114 A. I don't know.
X Q. Now, Mr. Sommers, I believe you stated in your direct examination that your capital stock amounted to 7,500,000 dollars, so far as the same was authorized; and that you have issued only 4,500,000, so that you still have 3,000,000 of unsold stock on hand; why don't you sell that stock, if you need some money and pay your taxes?
A. I cannot answer that.
X Q. Do you know of any officer of your company that can answer it?

Mr. CHANDLER: I submit that this is not a fair question to ask, whether the witness knows of any officer that will answer the question, no witness will swear to that; that's not a fair question and I object to it.

A. I cannot answer that.
X Q. And you have also issued bonds for seven and a half million dollars upon which you are paying interest?
A. Yes, sir.
X Q. Well, suppose you had not issued those bonds, do you think you would have enough money left to pay your taxes?

Mr. CHANDLER: I object to the question as calling for no fact and as a question from the very nature of which it shows that it cannot be answered by this witness.

Mr. WOERNER: For the reasons stated by Mr. Chandler I will withdraw the question.

X Q. Most of the cars of the Suburban System run down town don't they?

A. Let me ask, City or County; or City and County, do you want it answered?

X Q. Only those that are in the city?

A. Yes, most of those run down town.

X Q. Both of these roads are operating cars within the City of St. Louis, do they not?

A. Yes, sir.

X Q. I believe that's all.

115 Redirect examination.

By Mr. CHANDLER:

R. D. Q. What's the distance from Grand avenue, Mr. Sommers, to the eastern terminus of the road, of both systems?

A. From Grand avenue—east?

R. D. Q. I am not asking for the trackage, but for the distance between Grand avenue, the former boundary of the city, and the eastern terminus of your line?

A. A little over three miles.

R. D. Q. Now these outside lines spoken of feed the inside lines, don't they?

A. Yes, sir.

R. D. Q. I believe that's all.

(Signed) EDGAR P. SOMMERS.

Subscribed and sworn to before me this 23rd day of November A. D., 1905.

(Signed) JAMES R. GRAY, *Examiner.*

Stipulation.

It is hereby admitted by the defendant, subject to objection on account of the competency and materiality and relevancy of said admission as testimony, that the records of the License Collector's Office of the City of St. Louis show that the number of omnibuses, hacks and other like vehicles engaged in carrying passengers for hire in the City of St. Louis is about five hundred, many of whom are doing business under said licenses. Counsel for the Defendants objects to the introduction of said testimony for the reason that it is incompetent, immaterial and irrelevant and has no connection with any issue in this case, the licensing of said vehicles being a separate and independent thing from the licensing of street cars.

J. S. WALSH, JR., a witness on behalf of the Complainants, after being duly sworn, testified as follows:

116 Direct examination.

By Mr. CHANDLER:

Q. Mr. Walsh, state your full name, please?
A. J. S. Walsh, Jr.
Q. Have you any official or personal relation with either of the complainants in these cases, the St. Louis and Suburban Ry. Co., or the St. Louis and Meramec River Ry. Company?
A. I am Vice-President and General Manager of the St. Louis and Suburban Railway Company.
Q. You have had your attention called to the exaction by the City of St. Louis of one mill tax on every revenue passenger carried by the Suburban System?

Mr. WOERNER: I object to the question because it does not state a fact; there is no exaction of one mill on every passenger carried; the tax is on the car, the amount of which tax is only ascertained by being fixed at the rate of one mill for each passenger carried on the car.

A. Yes, sir.
Q. Has that exaction been paid?
A. No, sir.
Q. Why not?
A. We consider the tax illegal and unjust.

Mr. WOERNER: I move that the answer of the witness be stricken out as being pure opinion, not relating to any fact or tending to establish any fact; and for the further reason that whether the witness considers it to be legal or illegal and unjust, or the officers of these companies think so, is a matter utterly immaterial so far as the validity of this Ordinance is concerned.

Q. Do you know whether the Suburban System was developed under the conviction of the officers of the Suburban System that the
117 right to charge five cents for every adult passenger carried and the right to charge two and a half cents for every child carried was permanent and inviolable?

Mr. WOERNER: I object to the question on the ground that the conviction of the officers of these companies and the ideas upon which they proceeded in the so-called development of their road are utterly immaterial in this case and throw no light on any issue involved; and can in no way, shape, form or manner bind the City of St. Louis or affect its right to pass the Ordinance in question.

A. It's a fact that we are bound by the Ordinances to charge a fare not exceeding five cents within the city limits, and for children under the age of twelve a fare not exceeding two and a half cents—we are bound strictly by ordinances to do that.
Q. I don't think that answers my question.

Mr. WOERNER: I move to strike out the answer of the witness be-

cause if such is a fact the ordinances mentioned can only be evidenced by writing and cannot be gone into by verbal statements.

Q. Repeat the question to the witness. (Question read as above.)
A. We have considered it that we have no right to charge more than five cents for adults and two and a half cents for children.

Mr. WOERNER: I move that the answer of the witness be stricken out for the reason that it doesn't make any difference what they consider themselves bound by, neither do their opinions affect any question of law in this case.

Q. Mr. Walsh, what's the distance from the eastern terminus of the Narrow Gauge Road as it was before the City Charter was adopted, and the present western boundary of the city?
A. About four and a half miles.

118 Q. State which railroad was the first—which railroad composing a part of the Suburban System was the first to be constructed is the question?
A. The Narrow Gauge.
Q. When constructed, was the Narrow Gauge wholly outside the City of St. Louis?
A. The road itself was; I am not positive about the eastern terminals; there might have been a few feet, say a hundred feet of track within the city.
Q. And when the Scheme and Charter was adopted in 1876 the boundaries of the city, the western boundary of the city was moved further west, wasn't it?

Mr. WOERNER: I object on the ground that the Scheme and Charter will show that.

A. Yes, sir.
Q. What I want to get at is the length of this Narrow Gauge Road that was brought into the city by the adoption of this Scheme and Charter?
A. From one extension to the other extension of the limits it finally reached a distance of four and a half miles.
Q. How far is it from Grand avenue to the western boundary of the city now?
A. By our rails? About four and a half miles.
Q. Now the Narrow Gauge Railroad was organized under the Steam Railroad Act?
A. Yes, sir.
Q. And was in existence at the time of the adoption of the Scheme and Charter, that is prior to 1876, wasn't it?
A. It was constructed and operated in '76; the charter I believe was granted in '73, I am not positive as to the date.

Mr. WOERNER: I move to strike out the answer as incompetent, the only evidence showing when the Charter was granted being by that instrument itself.

119 Q. That part of the Narrow Gauge which extends from Grand avenue to the present Western boundary of the City is a part of your system, a part of the Suburban System, is it?

A. That part of the Suburban System now only goes to Vandeventer avenue and from Vendeventer avenue east it was the old Cable and Western.

Q. What was it from Vandeventer avenue to the western boundary of the city?

A. You know the old Narrow Gauge ran some five hundred feet west of Grand avenue on Olive; but we are not operating that part of the road from Olive to Morgan; we have cut off that part of the old road and have connected with the Cable and Western——

Q. At any rate from Grand avenue to the western boundary of the city is covered by a part of the old Narrow Gauge System, isn't it?

A. Yes, sir.

Q. The Narrow Gauge System to which you have succeeded?

A. Yes, sir.

Q. That's all.

No cross examination.

(Signed) J. S. WALSH, JR.

Subscribed and sworn to before me this 23rd day of November, A. D. 1905.

(Signed) JAMES R. GRAY,
Examiner.

In the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri. In Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

It is hereby stipulated and agreed by the parties to this action that the ordinances of the City of St. Louis mentioned in complainant's bill herein and numbered 18677-17007-17375-18231-18667-17008-19350-19392-21087 were enacted by the City of St. Louis, and that each of them applies to complainant's system of railway described in complainant's bill, so far as said system lies within the City of St. Louis and that each and all of them has and have been in all things acted under, obeyed, kept and performed by complainant, which ordinances are hereto attached, and made a part hereof, all of which have been accepted by complainant.

(Signed) JEFFERSON CHANDLER,
Attorney for Complainant.
CHAS. W. BATES,
WM. F. WOERNER,
Attorneys for Defendants.

At this point the further taking of testimony herein was adjourned until Friday morning, November 17th, A. D. 1905, at eleven o'clock A. M.

11 o'clock a. m.—Friday, November 17*th*, 1905.

At this time by direction of attorney for complainants herein the further taking of testimony herein on behalf of Complainants is discontinued without day, and these depositions are closed.

120 (18,677.)

An ordinance to authorize the Manchester Road Electric Railway Company to transfer its railroad tracks and all its rights, privileges and franchises obtained from the City of St. Louis to the St. Louis and Meramec River Company, and to authorize said last named company to acquire the same and to maintain and operate its double track passenger railroad over said tracks in pursuance of and in accordance with said rights, privileges and franchises so acquired.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

Section 1. The Manchester Road Electric Railway Company is hereby authorized and empowered to transfer to the St. Louis and Meramec River Railroad Company, and said St. Louis and Meramec River Railroad Company is authorized to acquire upon such terms as such companies may mutually agree, all and singular the railroad of, and also all the rights, privileges and franchises which have heretofore been granted to or conferred upon said Manchester Road Electric Railway Company by the City of St. Louis by its ordinances numbered seventeen thousand eight, seventeen thousand three hundred seventy five and eighteen thousand two hundred thirty one, and when said transfer is made said St. Louis and Meramec River Railroad Company is hereby granted and shall possess, exercise and enjoy said rights, privileges and franchises as fully as if originally granted to it, and shall maintain and operate the said railroad acquired by it from said Manchester Road Electric Railway Company in pursuance thereof and in accordance therewith. Provided, however, that this ordinance shall become void unless the transfer hereinbefore authorized is made within one year from the date of the approval of this ordinance; and provided, further, that in the event such transfer is made to it, said St. Louis and Meramec River Railroad Company shall and will take said ordinances subject to and will carry out and perform all the obligations, requirements, conditions and
121 restrictions therein imposed on said Manchester Road Electric Railway Company.

Sec. 2. This ordinance shall become null and void unless within sixty days after its approval the said Manchester Road Electric Railway Company and St. Louis and Meramec River Railroad Company shall file with the City Register their respective written acceptances of the provisions of this ordinance, and shall also file with the City Register the written consent of the Suburban Railway Company to the provisions hereof, and to the transfer to said St. Louis and Meramec River Railroad Company of the agreement of said Suburban

Railroad Company provided for in section five of ordinance number eighteen thousand two hundred and thirty-one.
Approved August 29th, 1896.

(17,007.)

An ordinance authorizing John K. Latt to erect a public drinking fountain.

Be it ordered by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Permission and authority is hereby granted to John K. Latt to erect a public drinking fountain in front of his premises, situated at number twelve hundred and thirty-three Blair Avenue. The plans for said fountain shall be subject to the approval of the Board of Public Improvements.

SEC. 2. The water for said fountain shall be furnished by the City of St. Louis free of charge, and said fountain shall be under the control of the Water Commissioner.

Approved December 30th, 1892.

122 [17,375.]

An ordinance amendatory of ordinance number seventeen thousand and eight, entitled "An ordinance authorizing the Manchester Road Electric Railway Company to construct, maintain and operate a double track passenger railway on, along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power," approved December thirty-first, eighteen hundred ninety-two, by striking out sections one, two, six and seven, and inserting other sections in lieu thereof, and providing for the acceptance of said ordinance as amended.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Ordinance number seventeen thousand and eight, entitled "An ordinance authorizing the Manchester Road Electric Railroad to construct, maintain and operate a double track passenger railway on, along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power," approved December thirty-first, eighteen hundred and ninety-two, is hereby amended by striking out sections one, two, six and seven, and inserting in lieu thereof, the following:

SECTION 1. Authority is hereby given to the Manchester Road Electric Railway Company, its successors and assigns, to build, maintain and operate a double-track passenger railway, for public use, on and along the following route, to-wit: Beginning on the street known and hereinafter referred to as Manchester Road, at a point west of its junction with the Old Manchester Road, and where the tracks of the Lindell Railway Company leave said Manchester Road;

thence extending on and along said Manchester Road and across all streets and alleys and roads intersecting therewith, to the western limits of the City of St. Louis. And the said Manchester Road Electric Railway Company, its successors and assigns, may also construct, maintain and operate any and all curves, turn-outs, switches, sidings, crossovers and connections, and may make any and all excavations which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

The tracks of said road shall be laid from Kingshighway to Barron avenue, in the center of the street; from Barron avenue to a point about three hundred feet west from Kraft street, on the south side of Manchester Road, and from this point west to the city limits, in the center of the road, unless otherwise ordered by the Board of Public Improvements, which Board is hereby authorized to make such changes as to the designated portions of said streets to be occupied by said tracks as it may deem necessary.

SEC. 2. Said Manchester Road Electric Railway Company, its successors and assigns, may operate its railroad along the route authorized herein, by electricity, either by storage battery, the
123 conduit underground, by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power, may be erected and placed between the tracks of said railroad, or along the curbs of said streets, and from Kingshighway to Barron avenue, and also from a point three hundred feet, more or less, west of Kraft street, to the city limits. From Barron avenue to a point three hundred feet, more or less, west of Kraft street they shall be placed between the tracks, the wires to be not less than twenty feet above the surface of the street, the poles to be of iron and of such form and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said railway company, its successors and assigns, shall have the right to make any and all changes and improvements, from time to time, in its machinery, apparatus and appliances, which may be found necessary or advantageous to said company in its enterprise, provided the same shall meet the approval of said Board of Public Improvements. Said Manchester Road Electric Railway Company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the street over which it constructs its railroad, and the rails and ties of said road shall be so laid that they shall in no way obstruct, interfere with or impede the travel on the streets through which they are laid, and shall, at no point, be above the level of the roadway, even though said roadway be either above or below the established grade, but said rails shall, at all times, be on a level with all streets which said road crosses and intersects, and the said Manchester Road Electric Railway Company shall, at its own cost and expense, grade all streets

upon which its tracks are laid, for the full width of the streets, from building line to building line, to the satisfaction of the
124 Board of Public Improvements. From and after the completion of said railroad, said Manchester Road Electric Railway Company, its successors and assigns, shall run passenger cars over said railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes.

Said Manchester Road Electric Railway Company may run its cars on its railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of the machinery of said company, or by any other extraordinary accident or emergency shall not be deemed a violation of this ordinance.

The fare from any point on its line to any other point on its line as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons over five and under twelve years of age, and not exceed five cents for persons twelve years of age and over, for a continuous passage one way; or if in the future said Manchester Road Electric Railway Company, its successors or assigns, shall be able to make a contract and traffic agreement with any existing street railway, by which passengers may be carried from the western limits of the city to the terminus of such connecting line for a single fare, to be divided between the two roads, it shall make such contract and agreement or forfeit all its rights, franchises and privileges under this ordinance; and whenever such contract is made said company, its successors or assigns, shall operate owl cars between its eastern terminus and the city limits, as now pro-
125 vided by ordinance for roads having a down town terminus east of Seventh street and between Poplar and Carr streets.

And if the said Manchester Road Electric Railway Company shall ever sell or lease its line to or become consolidated with another company, or acquire ownership or control of another line, then the consolidated or purchasing company, its successors, assigns or lessee, shall be bound to carry passengers over its entire line in the city, as far west as the city limits, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over.

SEC. 6. In consideration of the rights and franchises granted by this ordinance, said railway company shall pay to the City of St. Louis, beginning five years after the acceptance of this franchise annually, on the first day of July, for the first five years thereafter, one thousand dollars per annum, and for the next five years, two thousand dollars per annum.

And said Manchester Road Electric Railway Company, its successors and assigns, further undertake, stipulate and agree, on the first day of July of each year, beginning fifteen years after the acceptance of this ordinance, to file with the Comptroller of the City of St. Louis a full and complete statement of the gross earnings of said railway company or its said line, for the preceding year, sub-

scribed and sworn to by its President and Secretary; and shall pay to the Treasurer of the City of St. Louis, within ten days after the filing of each and every such statement during the remainder of the term of said ordinance, the sum of three per cent. on the amount of its gross earnings for each year, which amount shall in no one year be less than three thousand dollars. Which said payments shall be in addition to all other taxes or license fees now or hereafter prescribed by law.

126 Should said Manchester Road Electric Railway Company at any time purchase, lease or in any manner whatsoever acquire the control or management of any other railway or line, or should it in any manner become the property of, or pass into the control or under the management of any other railway line, company or system, or should the property or franchises of said Manchester Road Electric Railway Company be reason of the adoption of a joint or general charge for several lines, or for any reason, or in any manner, be so managed or operated as to make a separate and distinct report of its gross earnings impracticable, then for such time the report or statement of gross earnings upon which said per cents. are to be paid, and which must be filed as stated, shall be determined and made as follows: The amount of gross earnings so to be reported for said purposes of taxation shall be in the same proportion to the gross earnings of the entire line, railway, company or system of which for the time being it forms a part, as the mileage of the Manchester Road Electric Railway Company bears to the mileage of such whole line, railway company or system. The Mayor, Comptroller, Register or Treasurer of the City of St. Louis shall have the right at any time to examine the books and papers of said company, its successors and assigns, or the books and papers of any other company or railway in conjunction with which it may be operated, for the purpose of ascertaining the gross earnings upon which the said per cents. are to be paid.

The failure on the part of the said company, or its successors, or assigns, or on part of any other company, railway or system, in conjunction with which it may be operated, to file a true and correct annual statement or report as herein provided, or to pay the aforesaid tax on gross receipts, within thirty days after such state-

127 ment should be filed, or after such tax becomes due and payable, shall work a forfeiture of the rights, privileges and franchises granted by this ordinance, and the amount of said tax shall also constitute a legal demand against said company; and any violation of any provisions of this section shall work a forfeiture of all rights, privileges and franchises granted under this ordinance.

SEC. 7. The Manchester Road Electric Railway Company, in accepting this ordinance, agrees to comply with the provisions of all general ordinances and charter provisions now in force and with all general ordinances and charter provisions affecting street railroads that may hereafter be enacted.

SEC. 2. Unless said Manchester Road Electric Railway Company shall file its written acceptance of the provisions of this ordinance with the City Register, within sixty days from date of the approval

of this ordinance, the provisions of this ordinance shall be void and of no effect.

Approved January 30th, 1894.

[18,231.]

An ordinance authorizing the Manchester Road Electric Railway Company to extend its tracks and to construct, maintain and operate its double track railroad along and across certain streets and highways in the City of St. Louis, and to operate its line of railroad by electric power, and to construct and maintain feed wire lines and prescribing conditions therefor.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The Manchester Road Electric Railway Company, its lessees, successors and assigns, is hereby authorized to extend its tracks and construct, maintain and operate a double track railroad, together with all necessary turn-outs, switches, sidings and loops, over, along, across and upon the streets, alleys and public places on the following route, viz.: From the intersection of Manchester avenue (formerly called Manchester Road) and Sarah street; thence northwardly on, along and over said Sarah street, and across all intervening streets, alleys and public places to the intersection of Sarah street with the tracks of the St. Louis and Suburban Railway Company; there to connect with the tracks of the St. Louis and Suburban Railway Company, with the privileges of acquiring
128 from said St. Louis and Suburban Railway Company the right to run its cars upon and over the tracks of said last named company and when so acquired the right is hereby given to operate cars on said tracks from said junction on Sarah street to the eastern terminus of the tracks of said St. Louis and Suburban Railway Company, by lease, traffic agreement or otherwise.

SEC. 2. Said railway company, its lessees, successors and assigns, may operate said extension along the route authorized herein in connection with its line of road to be operated under ordinance number seventeen thousand three hundred and seventy-five, by electricity, either storage battery, the conduits, underground, or by overhead wire system, through overhead and supplementary ground circuits, and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power may be erected and placed either between the tracks of said railroad or along the curbs of said streets, as may be directed by the Board of Public Improvements; said poles shall be of iron or steel, and the wires shall not be less than twenty feet above the surface of the street; said poles to be of such form and design and at such portions of the streets as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done. The location of the poles and tracks shall be submitted to the Board of Public Improvements for their approval,

and shall be placed where designated by said Board of Public Improvements, and such poles and tracks shall, at any time thereafter, be removed, at the expense of said railway company, to such other portions of the streets occupied by them as the said Board may by order direct. And the said railway company shall have the right to make all reasonable and proper excavations in said streets, and all changes and improvements from time to time in its machinery, apparatus and appliances, subject, however, to the approval of the Board of Public Improvements.

Before laying its tracks upon the unimproved portion of Sarah street, the said railway company shall cause such portion of Sarah street to be graded, so as to conform to the established grade, for its full width, from building line to building line, at the expense of said company, in such manner as may be approved by the Board of Public Improvements.

And the said company shall cause the grade of its roadbed and tracks to conform to the now, or hereafter established grade of Sarah street, and the rails and ties of said road shall be so laid that they shall in no way obstruct or interfere with or impede the travel on the streets through which they are laid, and shall at no point be above the level of the roadway, but said rails shall at all times be on a level with all streets which said railroad crosses or intersects.

From and after the completion of said extended line of railroad said Manchester Road Electric Railway Company, its lessees, successors and assigns, shall run passenger cars over said railroad every day of the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its said extended line of railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operation by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of machinery of said company or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance, and said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall operate owl cars between Sixth street and the city limits, as is now provided by ordinance for roads having a downtown terminus east of Seventh street, and between Poplar and Carr streets.

Sec. 3. In addition to the right of said company to erect and maintain feed wires and poles along the line of its railroad, as provided by section two of this ordinance, and by ordinance number seventeen thousand and eight and number seventeen thousand, three hundred and seventy-five, said Manchester Road Electric Railway Company, its lessees, successors or asigns, shall have the right and privilege of obtaining electric power for the operation of its railroad from its terminus at the city limits along the line of its route, including its extended line of railway herein authorized to be constructed and built, from the St. Louis and Suburban Railway Company by feed wires extending from the power house of said St. Louis and Suburban Railway Company to the line of said Man-

chester Road Electric Railway Company; and said Manchester Road Electric Railway Company is hereby authorized to erect and maintain poles for the carrying of said feed wires and to maintain and operate said feed wires over, along, across, and upon the streets, alleys and public places on the following route, viz: Beginning at the power house of said St. L ...is and Suburban Railway Company, situated near De Hodiamont Station, on or near the line dividing the City of St. Louis from the county of St. Louis; thence by the most feasible route as determined by the Board of Public Improvements, and over, along, across and upon all intervening streets, alleys and public places to the north end of the Skinker road; thence southwardly over, along, across and upon said Skinker road and over and across all intervening streets, alleys and public places to McCausland avenue; thence southwardly over, along, across and upon said McCausland avenue and over and across all intervening streets, alleys and public places to the line of said Manchester Road
131 Electric Railway Company on Manchester avenue (formerly called Manchester Road.) Such wires to be not less than twenty feet above the surface of the streets, and such poles to be of iron or steel, of such form, and placed at such distances and at such portions of the street as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done. The location of such poles shall be submitted to the Board of Public Improvements for their approval, and shall be placed where designated by said Board of Public Improvements; provided, that said Manchester Road Electric Railway Company, its lessees, successors, or assigns, shall, whenever ordered so to do by the Board of Public Improvements, remove such feed wires and poles authorized by this section from above the streets and other public places, and shall place such feed wires underground in such streets, alleys and public places in such manner as may be directed by the Board of Public Improvements, and to the satisfaction of such Board.

SEC. 4. Whenever tracks shall be laid by said company upon any unimproved portion of Sarah street, said company shall cause the spaces between its tracks and rails, and for two feet outside thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever such street is improved or paved, constructed or reconstructed, the spaces between its rails and for one foot outside of its tracks shall be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portion of said street.

SEC. 5. The rate of fare shall not exceed two and one-half cents for children over five and under twelve years of age, nor five cents for persons over twelve years of age, for a single continuous passage either way, between any two points on said railroad within
132 the city limits, or between any point on said railroad east of the city limits, and any point on the connecting railroad over which the said Manchester Road Electric Railway Company, its lessees, successors or assigns, shall transport its passengers to and from Sixth street.

The rights and privileges granted by this ordinance shall become null and void unless said railway company shall, within sixty days after the signing of this ordinance by the Mayor, and before any work is begun on said extension, file with the City Register an agreement, duly and properly signed and executed by the St. Louis and Suburban Railway Company, which shall secure the transportation of passengers between the western terminus of the said Manchester Road Electric Railway Company at the city limits to any point upon the line of said St. Louis and Suburban Railway Company, or *vice versa*, for a single fare of two and one-half cents for children over five and under twelve years of age, and five cents for persons twelve years and over, either by continuous passage or by transfer. All the rights and privileges granted by this ordinance shall become null and void if, and when, at any time hereafter said company, its lessees, successors or assigns, shall fail to afford transportation to its passengers from the city limits on the line of said Manchester Road Electric Railway to any point on the line of the St. Louis and Suburban Railway Company, and from any point on the line of the St. Louis and Suburban Railway to the western terminus of the said Manchester Road Electric Railway Company, for a single fare either way, either by continuous passage or by convenient transfer. Children's tickets shall be sold by conductors on the cars, two for five cents.

SEC. 6. Within thirty days after the signing of this bill by the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall execute its bond
133 to the City of St. Louis in the penal sum of twenty thousand dollars, with at least two securities, to be approved by the Mayor and Council, conditioned that it will save the city harmless on account of all damages that may be sustained by the city, or by any person or persons, firm or corporation, during the construction of said extension, or on account of the building of such road; and conditioned, further, that said company will faithfully comply with all the conditions of this ordinance. Said bond shall be renewed from time to time, whenever requested by the Municipal Assembly, if the security on said bond is found inadequate to the risk, or when requested to do so by the Mayor, and any failure to renew the same when so required shall work a forfeiture of this franchise.

SEC. 7. The work authorized by this ordinance shall be completed within six months after the signing of this ordinance by the Mayor, and said road shall be in operation within six months from the city limits to the eastern terminus of the tracks of the St. Louis and Suburban Railway Company, as provided in section five of this ordinance. Failure to comply with this section will forfeit all rights and privileges hereby granted; and said company shall remove from the streets any obstructions which may have been placed therein, and restore said streets to the same condition they were in before the work of laying the tracks was begun. Any failure of the company to comply with the conditions of this section shall constitute a breach of the bond provided in section six hereof, and cause a forfeiture of the rights herein granted.

SEC. 8. All of the provisions of city ordinances numbers seventeen thousand and eight and seventeen thousand three hundred and seventy-five, so far as the same are in force and apply to the present line of the said Manchester Road Electric Railway Company,
134 shall continue in force and apply to the entire line of railway, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

SEC. 9. The Manchester Road Electric Railway Company in accepting this ordinance agrees to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force, or which may hereafter be enacted and applicable to its entire line of railroad or any part thereof.

SEC. 10. In consideration of the rights and privileges hereby granted the said railway company shall be required and agrees to pay into the City Treasury on the first day of January, eighteen hundred ninety-seven, the sum of one thousand dollars, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred five, and the sum of two thousand dollars on the first day of January, nineteen hundred six, and a like sum on the first day of January each year thereafter, until and including the year nineteen hundred ten; such payments to be in addition to the annual payments provided for in section six of ordinance number seventeen thousand three hundred and seventy-five, approved January thirty, eighteen hundred and ninety-four; and all of the provisions of said section six of said ordinance number seventeen thousand three hundred and seventy-five concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company shall apply to the entire line of said railway company, including this extension; provided, that, in consideration of the right to build and operate the extensions covered by this ordinance, the total amount of the
135 gross earnings of the company paid to the city shall not be less than five thousand dollars per annum.

SEC. 11. This ordinance, and all rights and privileges and franchises granted hereby, shall cease and terminate January first, nineteen hundred twenty-five.

SEC. 12. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this ordinance shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

Approved December 28th, 1895.

(18,667.)

An ordinance to establish the grades of streets, avenues and alleys in the City of St. Louis.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The grades of streets, avenues and alleys named in

this ordinance are hereby established at elevations above the city directrix, as follows: North and south alley in city block number one thousand five hundred and eleven; at intersection with north line of Cherokee street, one hundred and thirty one and five tenths feet; at intersection with the south line of Utah street, one hundred and thirty eight and two tenths feet. North and south alley in city block number seven hundred and ninety-seven; at intersection with the north line of Lami street, thirty-five and six-tenths feet; at intersection with east and west alley in said block, thirty-one feet; at intersection with the south line of Shenandoah avenue twenty-six and four tenths feet. East and west alley in city block number seven hundred and ninety-seven; at intersection with the west line of Ninth street, twenty-seven and four-tenths feet; at intersection with the north and south alley in said block, thirty-one feet. North and south alley in city block number one thousand five hundred and sixty-three; at intersection with the north line of Miami street, one hundred and fifteen and one-tenth feet; at a point two hun-
136 dred feet north of the north line of Miami street, one hundred and sixteen and five-tenths feet; at intersection with the east and west alley in said block, one hundred and thirteen and seven-tenths feet; at intersection with the south line of Potomac street, one hundred and twelve and five-tenths feet. East and west alley in city block number one thousand five hundred and sixty-three; at intersection with the east line of Texas avenue, one hundred and fifteen and seven-tenths feet; at intersection with the north and south alley in said block, one hundred and thirteen and seven-tenths feet. North and south alley in city block number one thousand eight hundred and eighty seven; at intersection with the south line of North Market street, ninety-eight and six-tenths feet at a point two hundred and fifty three feet south of the south line of North Market street, one hundred and four feet; at its junction with Webster avenue, one hundred and seven and two-tenths feet. North and south alley in city block number two thousand one hundred and twenty-four; at intersection with the north line of Blaine avenue one hundred and forty four and five tenths feet; at intersection with the east and west alley in said block, one hundred and forty two feet; at intersection with the south line of Folsom avenue, one hundred ans thirty six and eight tenths feet. East and west alley in city block number two thousand one hundred and thirty-three; at intersection with the west line of Ohio avenue, eighty-three and four tenths feet; at intersection with east line of California avenue, ninety five and six tenths feet. East and west alley in city block number three thousand nine hundred and two; at intersection with the west line of Newstead avenue, seventy-seven and five-tenths feet; at intersection with the east line of Taylor avenue, eighty five feet. East and west alley in city block number four thousand five hundred and seventy-eight; at intersection with the west line of Newstead avenue, ninety-five and four tenths
137 feet; at intersection with the east line of Taylor avenue, one hundred and two and three-tenths feet. East and west

alley in city block number four thousand five hundred and eighty south; at intersection with the west line of Newstead avenue, ninety-one feet; at intersection with the east line of Taylor avenue one hundred and two and four tenths feet. East and west alley in city block number four thousand five hundred and eighty north; at intersection with the west line of Newstead avenue ninety-three feet; at intersection with the east line of Taylor avenue, one hundred and two and two-tenths feet. Florissant avenue; at intersection with Harris avenue, ninety-eight and two-tenths feet; at intersection with Red Bud avenue, ninety-nine and seven-tenths feet; at intersection with Athlone avenue, ninety-eight and two-tenths feet; at intersection with proposed Holly Avenue, ninety-six feet; at a point ninety-five feet north of the north line of proposed Holly avenue, ninety-five and eight-tenths feet; at a point two hundred and twenty feet north of the north line of proposed Holly avenue, ninety two and five tenths feet; at intersection with proposed Clarence avenue, eighty nine and two tenths feet; at intersection with Pope avenue, seventy-seven and five tenths feet.

Approved August 29th, 1896.

138 [17,008.]

An ordinance authorizing the Manchester Road Electric Railway Company to construct, maintain and operate a double track passenger railway, on along and across certain streets and highways in the City of St. Louis, and to operate its lines of railroad by electric power.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. Authority is hereby given to the Manchester Road Electric Railway Company, its successors and assigns, to build, maintain and operate a double track passenger railway for public use, on and along the following route, to-wit: Beginning on the street known and hereinafter referred to as Manchester Road, at its intersection with the western line of Kingshighway; thence extending on and along said Manchester road and across all streets and alleys and roads intersecting therewith, to the western limits of the City of St. Louis. And the said railway company, its successors and assigns, may also construct, maintain and operate any and all curves, turn-outs, switches, sidings, cross-overs and connections, and may make any and all excavations which are reasonably necessary and convenient for the operation of its tracks along the route which it is by this ordinance authorized to use and occupy, and the gauge of the tracks of said railway shall conform to the gauge established by general ordinance for street railroads in the City of St. Louis.

139 The tracks of said road shall be laid from Kingshighway to Barron avenue, in the center of the road, from Barron avenue to a point about three hundred feet west from Kraft street, on the south side of Manchester road, and from this point west to the city limits, in the center of the road.

SEC. 2. Said railway company, its successors and assigns, may operate its railroad along the route authorized herein, by electricity, either by storage battery, the conduit underground or by the overhead wire system, through overhead and supplementary ground circuits; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power may be erected and placed either between the tracks of said railroad or along the curbs of said street and from Kingshighway to Barron avenue, and also from a point three hundred feet, more or less, west of Kraft street to the city limits; from Barron avenue to a point three hundred feet, more or less, west of Kraft street they shall be placed between the tracks, the wires to be not less than twenty feet above the surface of the street, and to be of such form and material and at such distances as may be required by the Board of Public Improvements, under whose supervision all of said work is to be done; and said railway company, its successors and assigns, shall have the right to make any and all changes and improvements from time to time in its machinery, apparatus and appliances which may be found necessary or advantageous to said company in its enterprise, provided the same shall meet the approval of said Board of Public Improvements. Said company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grades of the streets over which it constructs its railroad, and at all points where said road crosses any of the
140 streets of the City of St. Louis, the said railway company shall, at its own cost and expense, grade all streets upon which its tracks are laid, for the full width of said streets from building line to building line, to the satisfaction of the Board of Public Improvements. From and after the completion of said railroad, said Manchester Road Electric Railway Company, its successors and assigns, shall run passenger cars over said railroad every day in the year during the life of this franchise, between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its cars on its said railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangement of the machinery of said company, or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance. The fare from any point on its line to any other point on its line, as herein authorized to be constructed and operated, shall not exceed two and one-half cents for persons under twelve years of age, and not exceed five cents for persons twelve years of age and over, for a continuous passage one way. The rights, privileges and franchises hereby granted are granted subject to the following condition and proviso, to-wit: Before said company shall be permitted to operate said road along the line above mentioned, or any part thereof, it shall enter into a binding contract with one or more other street railway companies whereby, for a single fare of five cents for adults, and two and one-half cents for children under twelve years of age, as hereinbefore provided, passengers may be conveyed

from the western limits of said city, as hereinbefore mentioned, by proper transfers, to the eastern, northern and southern ends of such connecting companies' lines.

141 SEC. 4. Whenever any part of said Manchester Road, through which said railway shall run, shall be repaired or reconstructed, said company shall, upon being notified by the Street Commissioner so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of said street is repaired or reconstructed.

SEC. 5. Within one hundred and twenty days after this ordinance shall be approved, said company shall file its written acceptance in the office of the City Register, of all the provisions of this ordinance, and deposit with the City Treasurer the sum of two thousand dollars as security that it will, within one year from the date of the approval of this ordinance, in good faith begin the work herein provided to be done, and that it will complete the work within two years from the date said work shall be commenced. And unless the said company shall file its written acceptance of the provisions of this ordinance, deposit the above amount and commence work as herein provided, the rights and privileges herein granted by the provisions of this ordinance shall cease and become void, and the money deposited shall thereupon absolutely become the property of the City of St. Louis, and no claim shall hereafter be made or allowed to refund the same or any part thereof.

SEC. 6. In consideration of the rights and franchises granted by this ordinance, the said railway company shall pay to the City of St. Louis, annually, beginning from the time of the acceptance of this franchise, after the first five years of the franchise, one thousand dollars per year for five years; for balance of the franchise two thousand dollars per year.

SEC. 7. The said Manchester Road Electric Railway Company in accepting this ordinance agrees to comply with the provisions

142 of all general ordinances now in force, or that may be passed in the future governing the construction, maintenance and operation of street railroads.

SEC. 8. This ordinance and all the rights, privileges and franchises hereby granted shall cease and terminate January first, nineteen hundred and twenty-five.

Approved December 31st, 1892.

[19,350.]

An ordinance authorizing the St. Louis and Suburban Railway Company to extend its tracks from its present terminus on Locust street, near Sixth street, and construct a railroad over, along and across certain streets, in the City of St. Louis, and to operate its cars over and upon the tracks of certain other railroads, and to operate the same by electric power, and also authorizing the St. Louis and Meramec River Railroad Company to join with said St. Louis and Suburban Railway Company in said construction, and to maintain and operate its cars over the same tracks and route with electric power, and authorizing said companies to operate ambulance and funeral cars and carry household supplies, and prescribing conditions for the rights hereby granted.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Suburban Railway Company and the St. Louis and Meramec River Railroad Company, their
143 successors and assigns, are hereby authorized and empowered to extend the tracks of the St. Louis and Suburban Railway Company and construct, operate and maintain their respective lines of railway as follows: Beginning at a point in the south track of the St. Louis and Suburban Railway Company on Locust street, near the intersection of Sixth street, thence eastwardly with a single track curve on Locust street and Sixth street, connecting with the track of the Union Depot Railway Company on Sixth street; thence southwardly, over, along and upon said track of the Union Depot Railway Company on Sixth street to a point where the tracks of the Southern Electric Railroad Company connect with the tracks of said Union Depot Railway Company on Sixth street, near the north side of Pine street; thence south on and along said Sixth street, over and upon the track of the Southern Electric Railroad Company to a point near Elm street with the right to cross all intervening streets and railroad tracks; thence eastwardly with a single track curve connecting with the south track of the St. Louis Railroad Company on Elm street; thence east on Elm street over and upon the south track of said St. Louis Railroad Company to its terminus on Elm street near Broadway; thence east on Elm street with a single track over and across the tracks of the St. Louis Railroad Company on Broadway to the east line of Broadway; thence east on Elm street to the west line of Fourth street with a double track which may be used for such switching and standing of cars as may be incidental and necessary to the regular business of said companies; thence with a single curve track to connect the south track on Elm street with the east track of the People's Railway Company on Fourth street; thence north over and upon said east track of the People's Railway Company to Locust street; thence west with a single curve track on Fourth and Locust streets and across the west track of said
144 People's Railway Company to a connection with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street; thence west over and upon said north track,

and across the tracks of the St. Louis Railroad Company on Broadway to a point near Sixth street; thence west and across the tracks of the Cass Avenue and Fair Grounds Railway Company and of the Union Depot Railway Company on Sixth street to a connection with the north track of said St. Louis and Suburban Railway Company on Locust street near Sixth street; provided, however, that said companies may build, with proper curve connections with their track provided for above on Elm street and with the north track of the Cass Avenue and Fair Grounds Railway Company on Locust street near Fourth street, a temporary single track on Fourth street between Elm and Locust streets, east of and as near as practicable to the east track of the People's Railway Company, the east rail of said temporary track to be distant at least ten feet from the east curb of the street; and maintain and operate their cars over the same as part of the route herein granted, until the tracks of the People's Railway Company have been so reconstructed as to give sufficient space between them to permit the safe and convenient operation of the cars of the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company upon the east track thereof as provided above in this section, between Elm and Locust streets; said companies shall be required, and they hereby agree, to remove such temporary track and restore the street to its former condition, to the satisfaction of the Street Commissioner, whenever the tracks of the People's Railway Company are reconstructed as above provided, and said companies are able to begin the operation of their cars on the east track thereof.

If said companies fail to remove such temporary track
145 when they are able to begin the operation of their cars upon the east track of the People's Railway Company, after the tracks of said last named company shall have been reconstructed as above provided, such failure shall work a forfeiture of all the rights and privileges granted by this ordinance and shall constitute a breach of the bond given under the provisions of this ordinance, and the city shall remove such temporary track and restore the street at the cost of said companies, such cost to be recovered by the city against the bond given under the provisions of this ordinance.

SEC. 2. Said lines of railroad hereby authorized shall be operated by electric power, either by storage battery, conduits underground, the overhead wire system, through overhead and supplementary ground circuits, or any other electric system. Said companies may erect iron poles to carry overhead wires. The feed wires shall not be less than twenty feet above the surface of the street, said poles to be placed along the curbs of streets at such distances apart as may be deemed necessary for the safe and proper operations of said railroads, and the said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company may also construct, maintain and operate all curves, turnouts, switches, sidings, crossings, crossovers and connections, make all excavations which are reasonably necessary and convenient for the operation of their tracks along the route which they are by this ordinance authorized to use and occupy. The general plan, char-

acter and location of the poles shall be submitted to and approved by the Board of Public Improvements.

SEC. 3. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, may run their cars over said route as hereby authorized, at a rate of speed not to exceed ten miles per hour.

SEC. 4. Whenever any of the streets through which the tracks of said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, authorized by this ordinance to be reconstructed, are laid, shall be repaired or reconstructed, said companies shall, upon being notified by the Street Commissioners so to do, cause the space between the rails and tracks, and twelve inches outside thereof, to be repaired and reconstructed with the same material, or better, with which the remainder of the street is repaired or reconstructed to the satisfaction of the Street Commissioner, and said companies shall cause the grade of the roadbed and tracks authorized by this ordinance to be constructed to conform to the grades now or hereafter established of the streets in which said tracks are laid, and at all points where said railroads cross any of the streets of the City of St. Louis.

SEC. 5. The said St. Louis and Suburban Railway Company and the said St. Louis and Meramec River Railroad Company, their successors and assigns, shall, within sixty days after the approval of this ordinance, file with the City Register their joint written acceptance of all the provisions hereof; and also their joint bond to the City of St. Louis in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that said companies, and each of them, jointly and severally, shall observe all the terms and conditions of this ordinance and all general ordinances of the City of St. Louis now in force, or that may hereafter be enacted in reference to street railways, and that they shall hold the City of St. Louis harmless from the payment of all or any damages and costs which may be established against the City of St. Louis by reason or on account of the
147 construction, operation and maintenance of said railroads, or either of them, or by reason of the failure of said railway companies, or either of them, to comply with all the terms and conditions of this ordinance; which bond shall be renewed from time to time whenever demanded by the Mayor, and whenever a new bond is demanded by the Mayor, and given by said railroad companies, and approved by the Mayor and Council, it shall supersede the old bond, and thereupon the old bond shall be canceled and returned to the makers, and the new bond filed with the Register of the city.

SEC. 6. Said companies may run United States mail, ambulance and funeral cars, and cars for the transportation of family goods and supplies (excepting coal) over the tracks hereby authorized.

SEC. 7. In consideration of the rights and privileges granted by this ordinance, said St. Louis and Suburban Railway Company and said St. Louis and Meramec River Railroad Company, their succes-

sors or assigns, each year, until the expiration of the rights and privileges granted by this ordinance, — pay to the Treasurer of the City of St. Louis, for account of said city, the sum of three thousand five hundred dollars per annum, on the thirty-first of December of each year, such payments to be in addition to all other taxes and payments now required by law or ordinance.

SEC. 8. The City of St. Louis reserves the right to alter, amend or repeal this ordinance at any time.

SEC. 9. This ordinance shall continue in force until February sixth, nineteen hundred thirty six.

Approved April 5, 1898.

[19,392.]

148 An ordinance authorizing the St. Louis and Meramec River Railroad Company to extend its tracks on Sarah street and to construct, maintain and operate its double track railroad along and across certain other streets and highways in the city of St. Louis, and to operate its line of railroad by electric power, and to construct and maintain feed wire lines; and prescribing conditions therefor; also to operate funeral and ambulance cars and to carry household supplies.

Be it ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION 1. The St. Louis and Meramec River Railroad Company is hereby authorized to extend its tracks and to construct, maintain and operate a double track railroad, together with all the necessary curves, turnouts, switches, sidings and loops, over, along, across and upon the streets, alleys and public places on the following route, viz.: From the intersection and connection of the double tracks of said railroad on Sarah street, in said city, with the tracks of the St. Louis and Suburban Railway Company on said Sarah street; thence northwardly with a double track on, along and over said Sarah street to Labadie avenue; thence with a single track over and along Sarah street to Ashland avenue; thence west with a single track over and along Ashland avenue to Fair avenue; also continuing the west track at and from the intersection of Sarah street and Labadie avenue westwardly with a single track over and along Labadie avenue to a point opposite the center line of Fair avenue, extended southwardly to Labadie avenue; thence northwardly with a single track over private property into Fair avenue; thence northwardly over Fair avenue to Ashland avenue; thence westwardly with a double track in Ashland avenue one hundred and forty-six feet four inches, more or less, to a point opposite the center line of Fair avenue extended south from Natural Bridge Road, or such distance as may
149 be necessary to reach the center of Fair avenue, whenever and wherever opened south from Natural Bridge Road to Ashland avenue; thence northwardly over private land, or northwardly so soon as the same shall be open, on, over and along Fair avenue to

Natural Bridge Road; thence, if necessary, by opening of Fair avenue, along and on Natural Bridge Road to Fair avenue; thence northwardly on, over and along said Fair avenue to Rosalie street; thence no-thwestwardly along and over said Rosalie street to Harris avenue; thence along and over Harris avenue to Florissant avenue. And said company, its successors and assigns, is also authorized to cross with its said tracks all intervening streets, alleys and public places, and also the tracks of any and all other street railroads upon said route.

SECTION 2. Said railroad company, its lessees, successors and assigns, may operate said extension along the route authorized herein, in connection with and as a part of its line of road operated, and to be operated under ordinances of the City of St. Louis, numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, by electricity, either by storage battery, conduits, underground or overhead wire system, through overhead and supplementary ground circuits, or any other electric system; and for this purpose the poles, wires, conduits or other appliances necessary or convenient in the use of electricity as a motive power, may be erected and placed either between the tracks of said railroad or along the curbs of said streets, as may be directed by the Board of Public Improvements; said poles to be of such form and design and in such portions of the streets as may be required by the Board of Public Improvements, under whose supervision all of said work is done. The location of the said poles and tracks shall be submitted to the Board of
150 Public Improvements for their approval, and shall be placed where designated by said Board of Public Improvements, and such poles and tracks shall at any time thereafter be removed at the expense of said railroad company, to such other portions of the streets occupied by them as the said board may by order direct. And the said railroad company shall have the right to make all reasonable and proper excavations in said streets and all changes and improvements from time to time in its machinery, apparatus and appliances, subject, however, to the approval of the Board of Public Improvements. And the said company shall cause the grade of its roadbed and tracks to conform to the now or hereafter established grade of said streets, and the rails and ties of said road shall be so laid that they shall in no way obstruct or interfere with or impede the travel on the streets through which they are laid, and shall at no point be above the level of the roadway; but said rails shall at all times be on a level with all streets which said railroad crosses or intersects. Before laying said tracks the said company shall cause the streets wherever such tracks are laid to be graded from curb to curb, and to the approval of the Board of Public Improvements. From and after the completion of said extended line of railroad or railway said St. Louis and Meramec River Railroad Company, its lessees, successors and assigns, shall run passenger cars over said railroad every day of the year during the life of this franchise between the hours of six o'clock a. m. and twelve o'clock midnight, at intervals not exceeding ten minutes. Said company may run its

cars on its extended line of railroad at a rate of speed not to exceed fifteen miles an hour. The temporary suspension of operations by said company, or the temporary use of horse power in drawing its cars, caused in either case by derangements of machinery of said company, or by any other extraordinary accident or emergency, shall not be deemed a violation of this ordinance.

151 SECTION 3. In addition to the rights of said company to erect and maintain feed wires and poles along the line of its railroad, as provided by section two of this ordinance and by ordinances numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, said railroad company, its lessees, successors or assigns, shall have the right and privilege of obtaining electric power for the operation of its said extension from the St. Louis and Suburban Railway Company, by feed wires extending from the power house of said St. Louis and Suburban Railway Company to the said extension, carried on poles, along, over and across such streets and alleys of the said City of St. Louis as may be hereafter selected by said company and approved by the Board of Public Improvements and the location of said poles along such route shall also be approved by the said Board of Public Improvements before said company shall have the right to erect said poles.

SECTION 4. Whenever tracks shall be laid by said company upon any unimproved portion of the said route, said company shall cause the space between its tracks and rails, and for one foot outside thereof, to be improved and kept improved with macadam or such other material as the Street Commissioner shall direct, and whenever such street is improved or paved, constructed or reconstructed, the space between its rails and for one foot outside of its tracks shall be improved and kept improved by said company with the same material, or better, and in like manner as the remaining portions of said street.

SECTION 5. The rate of fare shall not exceed two and one-half cents for children over five and under twelve years of age, nor over five cents for persons over twelve years of age, for single

152 continuous passage either way, between any two points on said railroad, within the city limits, including said extension and line of road now operated by said company within said city limits; or between any point on or to said railroad already operated or to be operated under this ordinance, east of the city limits, and on or to any point on the St. Louis and Suburban Railway Company's, over which the said St. Louis and Meramec River Railroad Company, its lessees, successors or assigns, now or hereafter may transport its passengers to and from Sixth street; making such transfers and using such transfer tickets as may be necessary.

At the time of filing this acceptance of this ordinance as provided herein, the said St. Louis and Meramec River Railroad Company shall file with the City Register the written acceptance of the St. Louis and Suburban Railway Company of all the provisions of this section.

SECTION 6. Within sixty days after the approval of this bill by

the Mayor, said company shall file with the City Register its acceptance of the provisions of this ordinance, and shall agree therein to comply with the provisions of all general ordinances and charter provisions of said city affecting street railroads, that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad, or any part thereof, and shall execute its bond to the City of St. Louis, in the penal sum of ten thousand dollars, with two or more sureties, to be approved by the Mayor and Council, conditioned that it will save the city harmless on account of all damages that may be sustained by the city, or by any person, or persons, firm or corporation, during the construction of said extension, or on account of the building of said extension of said road; and condition- further, that said company will
153 faithfully comply with all the conditions of this ordinance, and with all the general ordinances and charter provisions of said city affecting street railroads, that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad, or any part thereof. Said bond shall be renewed from time to time whenever requested by the Municipal Assembly, if the security on said bond is found inadequate to the risks, or when requested to do so by the Mayor.

SECTION 7. The work authorized by this ordinance shall be begun within six months from the approval of the ordinance, and shall be completed within two years after the opening of Fair avenue from Ashland avenue to Natural Bridge Road.

SECTION 8. Said St. Louis and Meramec River Railroad Company, its successors and assigns, shall not allow freight cars to be run on any portion of its line within the City of St. Louis, excepting for the transportation of family goods and supplies (excluding coal), and for the use of persons living on or near the line of said railroad. Said company may run cars to carry such family goods and supplies, also United States mail, ambulance and funeral cars over its lines and this extension.

SECTION 9. All the provisions of the city ordinances numbered seventeen thousand and eight, seventeen thousand three hundred and seventy-five and eighteen thousand two hundred and thirty-one, so far as the same are in force and apply to the present line of said St. Louis and Meramec River Railroad Company as the successor or lessee of the Manchester Road Electric Railroad Company, shall continue in force and apply to the entire line of railroad, including the extension herein provided for, except so far as the same may be modified by or be inconsistent with the provisions of this ordinance.

154 SECTION 10. In consideration of the rights and privileges hereby granted, the said railroad company shall be required, and agrees, to pay into the city treasury, beginning two years after the acceptance of this ordinance, annually, on the first day of July, for the first five years thereafter, one thousand dollars per annum, and for each year thereafter, two thousand dollars per annum up to nineteen hundred and ten; and from and after the year nineteen hundred and ten the provisions of section six of ordinance seventeen

thousand three hundred and seventy-five concerning the percentage of gross receipts to be paid to the city, and the manner of ascertaining the gross receipts of said company, shall apply to the entire line of said railroad, including this extension.

SECTION 11. This ordinance, and all the rights, privileges and franchises granted hereby, shall cease and terminate January first, nineteen hundred and twenty-five.

SECTION 12. Any failure on the part of said company, its successors or assigns, to comply with the conditions and requirements of this ordinance shall work a forfeiture of all rights granted by the same, and shall constitute a breach of said bond.

SECTION 13. The St. Louis and Meramec River Railroad Company, in accepting this ordinance, agrees to comply with the provisions of all general ordinances and Charter provisions affecting street railroads that may now be in force, or which may hereafter be enacted, and applicable to its entire line of railroad or any part thereof.

Approved June 10, 1898.

[21,087.]

An ordinance to amend sections twenty-one hundred and
155 thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies em-
156 braced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in continuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number or figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be desig-
157 nated as beginning number; and also the number or figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table; and may appoint temporary inspectors,

not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make report provided for in section twenty-one hundred
158 and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties of the Comptroller, deputies or inspectors provided for in section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license; and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, copartnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed as impairing or affecting any license heretofore obtained.

Approved March 25, 1903.

159 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4988.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

I, James R. Gray, acting by consent of parties as Special Examiner herein, do certify that in the above-entitled causes now pending and undetermined in the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, there personally appeared before me at my office, Room No. 342 Custom House Building, Eighth, Ninth, Olive, Locust streets, St. Louis, Mo., on Tuesday, the Seventh day of November, A. D. 1905, at 10:30 o'clock A. M., and on divers days thereafter to which the hearing was from time to time adjourned, as appears from the record thereof, Mr. Jefferson Chandler on behalf of the complainants herein and Mr. Wm. F. Woerner on behalf of the Defendants herein, and E. P. Sommers and J. S. Walsh, Jr., witnesses produced on behalf of the Complainants herein; that the depositions of said witnesses were taken by consent of counsel of the respective parties, formal notice therof being waived by counsel for Defendants; that each of the said witnesses was by me duly sworn in the said causes and his deposition by counsel of parties reduced to writing from short hand notes taken and transcribed under my direction by a skillful stenographer, and read and subscribed by said witnesses in my presence, as appears in the record; that said depositions, as taken down in typewriting, are returned herewith to the Court in which said cause is pending.

I do hereby further certify that I am not of counsel or attorney for or related to either of the parties in this cause, or directly or indirectly interested in said suit, and that my fees amounting to $25.20 have been paid to me by Jefferson Chandler of counsel for Complainants.

In testimony whereof, I have hereunto set my hand this 23rd day of November, A. D. 1905.

JAMES R. GRAY, *Examiner.*

160 And afterwards, to-wit: on the 6th day of June, A. D., 1906, the following among other proceedings were had and appear of record in said cause, to-wit:—

4988.

ST. LOUIS AND MERAMEC RIVER RAILROAD CO., Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Now at this day this cause is argued by counsel and submitted to the Court.

And afterwards, to-wit: on the 17th day of September, A. D. 06, the following further proceedings were had and appear of rec- l in said cause, to-wit:—

4988.

T. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

This cause having been heretofore submitted to the Court, upon e evidence and proofs adduced, and the Court being fully advised ncerning the premises, it is now

Ordered, Adjudged and Decreed by the Court, that the defendant ity of St. Louis, its officers and agents be, and they are hereby per- etually enjoined and restrained from in anywise asserting or seek- g to enforce any of the provisions of an alleged ordinance of the id City, numbered 21087, assuming to impose a tax of one mill pon each revenue or pay passenger carried by the complainant, n cars used by them over its street railway in the City of St. Louis; at the said City of St. Louis, its officers and agents, and each of hem be, and they are hereby likewise enjoined and restrained rom in any manner, by suit or otherwise, asserting or enforcing aid alleged ordinance numbered 21,087 against the complainant, nd that complainant recover of said defendant its costs and charges herein expended and have execution therefor.

(Signed) G. A. FINKELNBURG, *Judge.*

September 17, 1906.

161 And afterwards, to-wit: on the 11th day of December, A. D. 1906, the following further proceedings were had and appear f record in said cause, as follows, to-wit:

(*Order Allowing Appeal, etc.*)

#4988.

ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
CITY OF ST. LOUIS, Defendant.

Now comes said defendant by its solicitor and files and presents to the Court its Assignment of Errors and Petition for Appeal from the final decree heretofore rendered herein to the Supreme Court of the United States; upon consideration whereof, it is

Ordered that said petition be and it is hereby granted and that said defendant give an appeal bond for costs in Five Hundred Dollars; thereupon the said defendant presents such a bond conditioned as required by law, which is approved and ordered filed, and it is

Further Ordered that the Clerk of this Court make out and certify

to said Supreme Court a full, true and complete transcript of the record and proceedings in this cause. Citation issued and filed.

G. A. FINKELNBURG, *Judge.*

December 11th, 1906.

Which said Assignment of errors, Prayer for Appeal, and Bond are respectively in words and figures as follows, to-wit:—

(*Assignment of Errors.*)

In the Circuit Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

In Equity. No. 4988.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

162 Comes now the City of St. Louis, defendant in the above-entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons:

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21087 of the City of St. Louis impaired the obligations of any of the special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to construct, operate and maintain street railways in said City, precluded the defendant the City of St. Louis from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis, by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction, maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license tax by virtue of the special franchise ordinances granting it, or its
163 assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its Charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant The City of St. Louis prays that the decree of the Circuit Court be reversed, and that said Court be directed to enter a decree in favor of said defendant.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitor- for Defendant.

(Prayer for Appeal to the Supreme Court.)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4988. In Equity.

ST. LOUIS & MERAMEC RIVER RAILROAD COMPANY, Complainant,
vs.
THE CITY OF ST. LOUIS, Defendant.

164 *Petition for Appeal.*

Now comes the City of St. Louis, the above-named defendant by its solicitors, and conceiving itself aggrieved by the final decree made and entered on the seventeenth day of September, A. D. 1906, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made and entered, duly authenticated, may be sent to said Supreme Court of the United States, at the City of Washington, D. C.

CHAS. W. BATES,
WM. F. WOERNER,
Solicitor- for said Defendant.

St. Louis, Mo. Dec. 12, 1906.

(*Bond.*)

Know all men by these presents;

That we, The City of St. Louis as principal and Rolla Wells as surety are held and firmly bound unto St. Louis and Meramec River Railroad Company in the full and just sum of Five Hundred Dollars to be paid to the said St. Louis and Meramec River Railroad Company or its successors or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 12th day of December in the year of our Lord one thousand nine hundred and six.

Whereas, lately at the September term A. D. 1906, of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said Court between St. Louis and Meramec River Railroad Company plaintiff and the City of St. Louis defendant decree was rendered against the said defendant and the said defendant has obtained an appeal
165 of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said St. Louis and Meramec River Railroad Company citing and admonishing it to be and appear in the Supreme Court of the United States at the City of Washington, D. C., thirty days from and after the date of said Citation.

Now the conditions of the above obligation is such, That if the said City of St. Louis shall prosecute said appeal to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of
Attest

CITY OF ST. LOUIS, [SEAL.]
[SEAL.] By ROLLA WELLS, *Mayor.* [SEAL.]
ROLLA WELLS. [SEAL.]
PATRICK J. REGAN, *Register.*

Approved
G. A. KINKELNBURG, *Judge.*

166 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4988.

ST. LOUIS & MERAMEC RIVER RAILROAD CO.
vs.
CITY OF ST. LOUIS.

For the reasons stated in the opinion filed in the case of United Railways Company *vs.* City of St. Louis, No. 4985, I am of opinion that the temporary injunction heretofore issued in this case should be made permanent, and it is so ordered.

Which said opinion filed in said case No. 4985 is in words and gures as follows, to-wit:

167 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

No. 4985.

UNITED RAILWAYS COMPANY OF ST. LOUIS
vs.
CITY OF ST. LOUIS.

FINKELNBURG, *District Judge:*

After a careful examination of the record as now presented, I am persuaded to adhere to the position heretofore taken by Judge Adams at the preliminary hearing of this case, and for the reasons then so well stated by him in his opinion, viz: the inviolability of the contracts entered into between the City on the one hand and the Railway Company on the other hand.

Single detached provisions may indeed be quoted from constitution and city charter which, taken by themselves, would seem to authorize the passage and enforcement of the ordinance here in controversy. But of course these instruments must be construed as a whole and effect given the other portions of them.

In brief, I find that under the constitution, laws and city charter applicable to this subject the City of St. Louis had a right to enter into contracts with reference to the construction and operation of these street railways—that it did enter into such contracts and fixed the terms—that a contract having been entered into its terms were not open to alteration thereafter by the City alone—that ordinance No. 21087 is an attempted violation of the terms of said contracts—that therefore its enforcement ought to be enjoined.

Counsel for defendant in their brief (p. 61) admit that, "if the city had attempted by ordinance to increase the special amounts of fixed sums or on gross receipts that the various companies had contracted to pay in the ordinance conferring these franchises"

168 then the ruling in Detroit *vs.* Railway, 184 U. S. 368, would apply, because they say, "on that point there *was* a contract"; but they contend that in the case at bar no such attempt was made; that the City simply amended its license tax on street cars, and that as to this there never was any contract. I cannot agree with this view of the situation. We must look at the substance, not names. The so-called amended license tax is an exaction of two per cent. on the gross earnings of the complainant's railways *in addition* to what was specially agreed upon as a consideration for the right to construct and operate these railways. The substance and true meaning of such a provision cannot be changed by calling it by another name. As a contract is obligatory on the citizen so it must be binding on the public authority. As Judge Adams well said in the opinion referred to:

"If the City can after once exercising its power and fixing the terms and conditions of its grant, change them in one particular, it can in all. If it can increase the once fixed charge for occupy-

ing the streets (called license tax) by 2 per cent. on the gross income it can exact 50 per cent. or more, and of course can utterly destroy the value of the complainant's property. It is this kind of evasion of property rights which in my opinion the Constitution of the United States (Sec. 10, Art. I) is intended to prevent."

As to the power of the Municipal Assembly to deprive itself of the further right to enforce taxes by contract, the distinction between general taxes and so-called license taxes must be borne in mind. The latter are not within the usual constitutional prohibitions against exemptions, etc. The Municipal Assembly may license or not license a particular occupation or business, or it may exact a license tax for a number of years and exhaust its power to
169 exact any more, as I think it has done in this instance.

The contention that the prior ordinances under which these railways were constructed confer rights of way only, but not the right to use them, or, as defendant's counsel put it, a right "to be" but not "to do," strikes me as an unreasonably narrow construction of thos- prior ordinances. The granting part of these ordinances all contain the words: "To construct, maintain and operate," or words equivalent thereto. But this point is also fully considered by Judge Adams, whose entire opinion I adopt for the purpose of this decision.

In view of the premises I am of opinion that the temporary injunction heretofore issued in this cause should be made permanent, and it is so ordered.

170 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, James R. Gray, Clerk of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a full, true and complete transcript of the record and proceedings In case No. 4988 of St. Louis and Meramec River Railroad Company Plaintiff, *vs.* City of St. Louis Defendant, as fully as the same remains on file and of record in said case in my office, and that the original citation is hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at office, in the City of St. Louis, in the Eastern Division of said District, this fifth day of January in the year of our Lord, nineteen hundred and *and* seven.

[Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri,]

JAMES R. GRAY,
Clerk of Said Court,
By —— ——, *Deputy.*

[Endorsed:] No. 4988 United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. St. Louis & Meramec River Railroad Co. against City of St. Louis. Duly Certified Transcript in the above entitled cause.

THE UNITED STATES OF AMERICA:

The St. Louis and Meramec River Railroad Company, Greeting:

You are hereby cited and admonished to be and appear in the preme Court of the United States at the City of Washington rty days from and after the day this Citation bears date, purnt to an appeal, filed in the Clerk's office of the Circuit Court the United States for the Eastern Division of the Eastern Judicial strict of Missouri, wherein The City of St. Louis is appellant and u are appellee, to show cause, if any there be, why the judgment ndered against the said appellant, as in said writ of error menned, should not be corrected, and why speedy justice should not done the parties in that behalf.

Witness, the Honorable G. A. Finkelnburg Judge of the Circuit urt of the United States for the Eastern District of Missouri, this " day of December in the year of our Lord one thousand nine ndred and six.

G. A. FINKELNBURG,
United States District Judge for the Eastern District of Missouri.

'2 [Endorsed:] In Equity No. 4988 United States Circuit Court, Eastern Division of the Eastern Judicial District of issouri. St. Louis and Meramec River Railroad Company *vs.* he City of St. Louis. Citation. Filed Dec. 11 1906 James R. ray Clerk.

Service of the within citation acknowledged this 11th day of Dec. 906.

BOYLE & PRIEST,
Att'ys for Appellee.

Endorsed on cover: File No. 20,521. E. Missouri C. C. U. S. 'erm No. 195. The City of St. Louis, appellant, *vs.* The St. ouis & Meramec River Railroad Company Filed January 10th, 907. File No. 20,521.

Office Supreme Court, U. S.
FILED.
MAR 10 1908
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 195.)

THE CITY OF ST. LOUIS,
Appellant,
vs.
ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY,
Appellee.
No. 20,521.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

APPELLANT'S STATEMENT OF THE CASE.
ASSIGNMENT OF ERRORS.
POINTS AND AUTHORITIES.
ARGUMENT.

CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant, City of St. Louis.

J. W. Steele & Co., Prs., 18 N. Third, St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

(No. 195.)

THE CITY OF ST. LOUIS,
Appellant,

vs.

ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY,
Appellee.

No. 20,521.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT OF THE CASE.

This case, like its predecessor on the docket, is nearly identical with No. 193 (United Railways case). It is an injunction proceeding, brought originally by the complainant (here appellee) by bill in equity filed on April 12th, 1904, in the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri, against the City of St. Louis (here appellant) to restrain the latter from enforcing the provision of an ordinance known as No. 21,087, herein below referred to, passed by its legislative body, termed the Municipal Assembly.

Statement of the Case.

The jurisdictional ground alleged is conflict with the impairment of contract clause of the United States Constitution (Section 10 of Article I) and deprivation of property without due process of law and denial of equal protection of the law (Article XIV of Amendment). The allegations and contentions of the bill and answer are more fully stated below.

A preliminary injunction was awarded by the Court, and made permanent upon final hearing.

The case was heard upon bill, answer, replication and testimony. Appeal was duly granted, assignment of errors filed, bond given, and the case duly brought to this Court.

The appellant, City of St. Louis, is a municipal corporation organized under a charter in pursuance of a Special Constitutional Provision, Article IX, Sections 20 to 25 inclusive, of the Missouri Constitution of 1875. The charter provisions authorizing the above ordinance are referred to hereinafter.

The complainant (appellee here) at the time of the institution of this cause was a Missouri corporation engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways.

It received its franchise in 1896.

Complainant proceeded to acquire by purchase or merger another of the street-car lines in the City of St. Louis, the Manchester Road Electric Railway Co. (enfranchised in 1892 by ordinance 17,008 and later ones). Complainant itself, if there is no impropriety in stating what does not appear in the printed record, it may be suggested, was in turn absorbed by the United Railways Company since the

appeal in this cause was taken. But in this record complainant appears as the successor or assignee of said former street railway company (Manch. Rd. El. Co.). These "special" or franchise ordinances, for the old railway lines now constituting the complainant, are more particularly referred to hereinafter.

The general ordinance attacked in this cause is known as No. 21,087, and is set out in full in the pleadings and in the agreed statement in the transcript of the Record (Print. Rec., pp. 99-101). This ordinance was enacted and approved March 25th, 1903. It provides that every person, etc., corporation or company engaged in the business of transporting passengers from one point to another within the city, for hire, on street railways, shall pay the License Collector of said City, a quarter annual license for each and every car used by them in transporting passengers, "the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months." (Print Rec., p. 100.) The manner of equipping cars to show the number of passengers carried, and the filing of a report, is also provided for. A refusal to comply with the terms of the ordinance is made a misdemeanor punishable by fine (which is, however, not a criminal but a civil proceeding in Missouri). The ordinance further provides that the license-tax therein called for shall not be construed as exempting or excusing the payment "of any sum agreed, assumed or required to be paid by the terms of any special ordinance or agreement or contract, nor as affecting the same in any way, nor as impairing or affecting any license theretofore obtained."

Set out in full, this ordinance is as follows (Print Rec., p. 99):

(21,087).

"An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

SECTION ONE. Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the "Municipal Code of St. Louis" are hereby amended by striking out said sections and inserting in lieu thereof new sections; and other certain new sections are hereby enacted to be known as Sections twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C and twenty-one hundred and thirty-seven A, of the "Municipal Code of St. Louis," all as follows:

SECTION TWENTY-ONE HUNDRED AND THIRTY-FOUR. Every person, co-partnership, association, corporation or company engaged in the business of transportating passengers from one point to another within the city, for hire, on street railways, shall pay a license to said city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE. All persons, co-partnerships, associations, corporations and companies embraced in the foregoing section shall pay the License Collector a quarter-annual license for each and every car used by them in transporting passengers, payable on the sixteenth day of April, July, October and January of each year, for the preceding period of the three months ending respectively on the last day of the preceding March, June, September and December, the amount of which quarterly license on each such car shall be determined at a sum equal to one mill for every revenue or pay passenger carried on such car during the said preceding period of three months, ending as aforesaid.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE A. On and after January first, nineteen hundred and three, every person who, and every corporation, company or association which, is required to pay a street car license, shall provide for, and equip each car used by it for transportation or carrying passengers, with a suitable register or indicator, capable of registering passengers to a number not less than nine thousand nine hundred and ninety-nine, and upon which shall be registered, rung up or indicated in contiuous numerical succession the number of passengers who have paid for transportation on such car; and the conductor or person collecting the fare shall ring up or register each passenger as the fare is collected.

After said time above stated, every such person, corporation, company or association shall each day furnish the Register of the City of St. Louis with a report or table showing the number of pay or revenue passengers transported on each respective car operated by it on the preceding day, each such car to be identified by its number; said report or table shall also show the number of figures shown on the passenger register or indicator at the time each such car started on its first trip for the day covered by said report, to be desig-

nated as beginning number; and also the number of figures shown on the said passenger register or indicator when said car was discontinued from carrying passengers on said day, which shall be designated as closing number.

The report or table for a day preceding a legal holiday or a Sunday shall be furnished on the first secular day thereafter.

If the furnishing of the table or report on the day provided for in this section becomes impossible by reason of circumstances beyond the control of the person or company required to furnish the same, then it shall be furnished as soon thereafter as possible.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE B. The Comptroller of the City of St. Louis, or he, acting through his authorized deputies, shall be, and hereby is, authorized to investigate the correctness and accuracy of the returns or reports required in the preceding section numbered twenty-one hundred and thirty-five A, and for that purpose shall have access at all reasonable times to the registers, books, documents and reports bearing on the same, of any person, company or association required to make such report or table, and may appoint temporary inspectors, not exceeding six, to make note of, check up and verify the figures and numbers shown by the passenger registers or indicators in the street cars, and assist in a proper investigation, whenever he so desires; said inspectors shall receive for their services a compensation of three dollars per day each while employed, and shall be employed or discharged at the pleasure of said Comptroller.

SECTION TWENTY-ONE HUNDRED AND THIRTY-FIVE C. Every person, corporation, company or association refusing or neglecting to make the report provided for in Section twenty-one hundred and thirty-five A, or making any false or fraudulent report, or interfering in the performance of the duties

of the Comptroller, deputies or inspectors provided for in Section twenty-one hundred and thirty-five B, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than five nor more than five hundred dollars.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SIX. On the sixteenth day of April, July, October and January of each year the License Collector shall notify all persons, companies, corporations or associations required to pay a street car license, to pay such license, and any of them refusing, failing or neglecting to pay said license within ten days after having received said notice, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; and each day of such failure, neglect or refusal shall constitute a separate offense.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN. A failure, refusal or neglect to pay such license for thirty days after the same is payable shall operate as a revocation of any existing or subsequent unpaid license such parties may have obtained to operate such street cars in this city.

SECTION TWENTY-ONE HUNDRED AND THIRTY-SEVEN A. Nothing in the preceding Sections twenty-one hundred and thirty-five, twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven shall be construed as exempting or excusing any person, co-partnership, corporation, association or company embraced therein from the payment of any sum agreed, assumed or required to be paid by the terms of any special ordinance, or agreement or contract, nor as replacing or affecting the same in any way, nor shall said sections be construed

as impairing or affecting any license heretofore obtained.

Approved March 25, 1903."

It is to be observed that the ordinance does not call for a percentage of gross receipts at all, but for a license tax on each separate car operated, the amount of which is to be determined as above stated.

This ordinance 21,087, imposing the aforesaid license tax is not an imposition for the first time of a license-tax on each street car from and after its passage in March, 1903, but on the contrary purports to be and is merely an amendment of the street car license-tax which was in force at the time and for many years theretofore had been in force, and was in force when all of the franchise ordinances were passed, and which fixed the license-tax at $25.00 for each car per annum. (Print. Rec., pp. 66, 72.) The function of the amending ordinance of 1903, No. 21,087, was mainly to substitute for this fixed sum of $25.00 a sum equal to one mill per passenger on each car.

All of the railway companies constituting the assignors of complainants (whose rights were acquired), as well as complainant itself, at all times complied with the old ordinance, and they have at all times paid the sum of $25.00 per car required to be paid under said ordinance, and continued so to do until the going into effect of Ordinance 21,087 (Print. Rec., pp. 66, 72).

But upon the passage of the latter, complainant refused to comply with any of its provisions; and when the City served the required notice and threatened to enforce the ordinance against complainant, it instituted this cause to restrain it, on the alleged ground as stated in the bill that the ordinance operated to impair the obligations of contracts

between them and the City, and to deprive complainants of their property without due process of law and to withhold from them the equal protection of the laws, and was hence unconstitutional as in conflict with Section 10, of Article I of the United States Constitution, and Article XIV of the Amendments. (Print. Rec., p. 18).

The bill alleges that said ordinance 21,087 does not call for "a license fee but is an additional unequal charge and compensation assumed to be and is arbitrarily exacted from this complainant as a consideration for rights and franchises already granted to it by contracts with the City of St. Louis and paid for by complainant in accordance with the provisions of said contracts." (Print. Rec., p. 17.)

The bill of complaint sets out with particularity all the various constitutional and charter provisions involved, with the conspicuous exception of the one vital provision in pursuance of which the said ordinance 21,087 was really enacted, namely, the charter right "to license, tax and regulate street cars," which the bill entirely ignores.

The answer sets forth the various defenses to the allegations of the bill, and specifically declares the right of the City to enact the said ordinance 21,087 as a license tax under charter provisions in the answer set up (and hereinbelow given in full), and denies that the special franchise or right-of-way ordinances pleaded as contracts in the bill, can be construed as exercising or surrendering the right of the City to impose the license tax provision in ordinance 21,087.

To be a little more specific, the answer, after setting forth what parts of the bill of complaint are denied and what admitted, and after setting out certain constitutional and char-

ter provisions (amongst them in par. 6 the right to amend, alter or repeal a grant in whole or in part) then goes on in paragraphs 7, 8, 9 and 10 of said answer to state specific defenses, which, since they may be taken as indicative of the main position of the defendant city, we may be pardoned in quoting, as follows: (Print. Rec., pp. 47-51):

> (7) And defendant states that having exclusive and plenary power under the Constitution, statutes, charter provisions and laws of the State to grant or withhold its consent to the complainant and its assignors to use its streets for the construction, operation and maintenance of street cars and street car tracks, or so much and such parts of such streets as it saw fit, and to impose such conditions and obligations before conferring its said consent as in its discretion it saw fit, it did, when complainants desired to use its streets for the purposes of constructing, operating and maintaining street car traffic and street car lines, impose as conditions for obtaining a franchise at all, and as conditions for the right of doing business in said city, the various obligations set forth in the ordinances referred to in complainants' bill and in said bill alleged to be considerations moving to the city for the rights, franchises and privileges granted in said ordinances. Defendant further states that all said obligations as to payment of the respective amounts to defendant city, repair of tracks, fare to be charged for transporting passengers, percentages of gross receipts, and specific annual sums, were voluntarily accepted by the complainant and its assignors as conditions for the granting of said franchises and the bare right to do business in said city, without which said franchise or right to do business would not have been obtained, and in no respect excluded or at all affected the right of defendant to require a license fee for the exercise of such right so conferred on the aforesaid conditions, nor to require payment of a general property tax on complainants' property.

(8) And now defendant states that in addition to all the provisions in its Charter heretofore set forth or referred to in complainant's bill, and entirely aside therefrom and independently thereof, it has, and at all times referred to in said bill had, as a part of the legislative power vested in the Mayor and Assembly, the power under its charter Article III, Section 26, clause 5th, by ordinance, to license, tax and regulate street railroad cars (amongst all other occupations and businesses); that pursuant to said authority it did duly and lawfully enact ordinance No. 21,087, approved March 25, 1903 (being the same the enforcement of which complainant seeks to enjoin), which is as follows, to-wit:

(21,087)

An ordinance to amend Sections twenty-one hundred and thirty-four, twenty-one hundred and thirty-five, twenty-one hundred and thirty-six and twenty-one hundred and thirty-seven of the 'Municipal Code of St. Louis' by striking out said sections and inserting certain new sections therefor, and the enactment of certain new sections to be known as twenty-one hundred and thirty-five A, twenty-one hundred and thirty-five B, twenty-one hundred and thirty-five C, and twenty-one hundred and thirty-seven A, all relating to street railway companies and the licensing thereof, and providing for reports of passengers carried on cars, equipment of cars with registers, appointment of inspectors, and for ways and means to enforce payment of said license, and providing a penalty for the non-payment thereof.

Be it Ordained by the Municipal Assembly of the City of St. Louis, as follows:

[Here follow the provisions of ordinance 21,087 which have been hereinabove set out in full, so the same is omitted here.]

(9) Defendant states that said ordinance 21087 does not in any way interfere with or violate the provisions of any contract or any privilege conferred upon the complainant or any of its assignors; that the obligations assumed by complainant and its assignors in the respective ordinances conferring franchises, rights and privileges were in no sense license fees or license taxes upon street cars, but only conditions under which the city consented that said complainant and their assignors could obtain the valuable right to the use of its streets, and in no way operated to exempt complainant from the imposition of license taxes and fees for the exercise of their business and the rights conferred by said franchises. On the contrary defendant avers that said ordinance was enacted in lieu of a prior ordinance therein repealed, which provided for a license fee or tax of $25 each year on each street car operated by any street car company and which license fee and tax complainant had regularly paid and recognized; and that said ordinance 21087 is strictly also a license fee or tax on each street car, and accurately considered is not, as alleged by complainant, a charge against the said company upon the gross receipts from the carriage of passengers exceeding two per cent. of the same.

And defendant further states that when said complainant accepted the provisions of said ordinances referred to in said bill conferring the alleged franchises, rights and privileges, and purchased the properties, and constructed the lines of railway in said bill mentioned, and, that it at all other times, and all the assignors of said company, did so with the full knowledge of the rights and authority of this defendant to enact said ordinance 21,087.

And defendant specially denies that the amount required to be paid is as alleged by complainant "absolutely required for the purpose of making extensions and procuring additional equipments essential to the

proper conduct of the service assumed by it and to the proper discharge of the obligations imposed upon it by the several special ordinances" by it set forth or cast a cloud on the title of the properties of complainant, which impairs its credit.

Defendant states that said license fee or tax is perfectly lawful and reasonable, and does not interfere with the conduct of complainant's business, but that if complainant is unable or indisposed to continue its said business and comply with the lawful and reasonable ordinances of this defendant, the Charter provisions hereinbefore set forth and section 1790a of ordinance 21113, approved April 6, 1903, passed in pursuance thereof, provide for the surrender of its said franchises and chartered rights, which action complainant has declined to adopt, but on the contrary in open violation of said ordinance 21087, operates street cars and engages in the business of transporting passengers from one point to another in the city, for hire, on street railways, without paying or applying for any license to said city, or complying with any one of the provisions of said ordinance.

(10). Defendant further states that said ordinance 21087 is of a general nature, applicable to all persons and companies equally with complainant, and that it agreed on June 16, 1898, with defendant, as one of the conditions under which it could derive or exercise any rights or interests under ordinances 19392 and 19393 referred to in said complainant's bill, and without which the same would not have become effective, to accept all obligations therein imposed on said complainant, and also to comply with all the terms and conditions of all valid general ordinances then in force or at any time thereafter to be passed in reference to street railways; and said respective assignors of complainant entered into similar agreements as a condition permitting them to assign such rights or franchises to complainant, wherein said assignors and each of them

agreed to accept all valid general ordinances then in force or which might be passed at any time thereafter.

[In the record as printed, some of the phrases appear in italics; but this is from a cause unknown to this defendant, as in the answer as filed there were no italics used, and the same should be read as if there were none.]

The replication amounts to a general denial of new matter.

The contention of the railway companies, as we understand it, is not that the City of St. Louis had no right to enact this general ordinance in question. It is that the same cannot be made applicable to them because, in the special ordinances (by which the City enfranchised complainant and its assignors, whose rights, privileges and franchises the latter has acquired) the City imposed certain obligations and conditions, amongst which were the payments of certain sums, the repair of streets between rails, etc. (hereinbelow more fully stated), which it is claimed were themselves an exercise by the City as against appellees of its power to impose license-taxes, and therefore operated as contracts which exhausted the right to impose any further license taxes for the operation of the cars.

The main contention of the City of St. Louis, as set forth in its answer, is, on the other hand, that all of these considerations and payments called for in the special or franchise ordinances to the companies were merely the contract price of obtaining the consent of the City required by the Constitution of the State, and Charter of the City, and were in no sense license taxes, and did not affect the power of the City to enact a license tax on each car.

The provision of the Missouri Constitution referred to in the answer, is Article XII, Section 20 (Print. Rec., p. 46).

> "No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

The provision of the City Charter under which ordinance 21087 (and the former ordinance which it amended, which provided for a license tax of $25.00 per annum on each car) was enacted, is found in Article III, Section 26, Clause 5. This clause confers authority on the City "to license, tax and regulate" many kinds of business and vocations, and a multitude of different kinds of vehicles, conveyances, etc., all specifically enumerated, amongst which appear "street railroad *cars*."

Under the Missouri Constitution the courts are required to take judicial notice of the Charter of St. Louis City. Const. 1875, Art. IX, sec. 21.

This clause of the charter above designated in full is as follows (Charter, Article III, Section 26, Clause 5):

> "Fifth.—TO LICENSE, TAX AND REGULATE VARIOUS KINDS OF BUSINESSES, ETC.; FIX RATES FOR CARRIAGES, DRAYAGE, ETC.; REGULATE WIDTH OF TIRES—TO SUPPRESS CERTAIN OCCUPATIONS AND AMUSEMENTS.—To license, tax and regulate lawyers, doctors, doctresses, undertakers, dentists, auctioneers, grocers, merchants, retailers, hotels, boarding houses, tenement houses, office buildings, public buildings, public halls, public grounds, concerts, photographists,

artists, agents, porters, runners, drummers, public lectures, public meetings and shows, real estate agents and brokers, financial agents and brokers, horse and cattle dealers, patent-right dealers, inspectors and gaugers, stock yard proprietors, examiners of titles, conveyancers, mercantile agents, insurance companies and insurance agents, bankers, banking or other corporations or institutions, telegraph companies or corporations, *street railroad cars,* livery and sale stables, hackney carriages, private carriages, barouches, buggies, wagons, omnibuses, carts, drays and other vehicles, and all other business, trades, avocations or professions whatever; to fix the rate for carriage of persons, and of wagonage, drayage and cartage or property, and regulate the width of the tires of all vehicles for heavy transportation; to license, regulate, tax or suppress ordinaries, hawkers, peddlers, brokers, pawnbrokers, money changers, intelligence offices, public masquerade balls, street exhibitions, dance houses, fortune tellers, pistol galleries, lottery ticket dealers, corn doctors; lock, private and venereal hospitals, museums and menageries, equestrian performances, horoscopic views, lung testers, muscle developers, magnifying glasses, billiard tables or any other tables or instruments used for amusement; circuses, operatic, theatrical and other exhibitions; shows and amusements, saloons, beer houses, tippling houses, dram shops, and gift enterprises; and to suppress prize fights, coon fighting, dog fights, chicken cock fights, gaming or gambling houses; and to suppress bawdy and disorderly houses, houses of ill-fame and of assignation; to provide for and enforce the registration of all births, marriages or deaths; to license, tax, regulate or suppress all occupations, professions and trades not hereinbefore enumerated, of whatever name and character."

The provisions of the City Charter, under which the numerous special or contract ordinances were enacted which

conferred authority upon the various street-car lines assigned to and acquired by appellees, are found in Article X, Section 1-5 of the Charter, and are as follows:

"Section 1. AUTHORITY OF MUNICIPAL ASSEMBLY IN REFERENCE TO STREET RAILROADS—MAY SELL FRANCHISES OR IMPOSE A PER CAPITA TAX OR A TAX ON GROSS RECEIPTS.—The Municipal Assembly shall have power by ordinance to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the construction of such street railroads, granting the right of way, or regulating and controlling them after their completion; and also shall have power to sell the franchise or right-of-way for such street railroads to the highest bidder, or as a consideration therefor, to impose a per capita tax on the passengers transported, or an annual tax on the gross receipts of such railroad, or on each car, and no street railroad shall hereafter be incorporated or built in the City of St. Louis except according to the above and other conditions of this Charter, and in such manner and to such extent as may be provided by ordinance.

Sec. 2. MAY REGULATE RUNNING OF CARS AND RATES OF FARE AND TAX PROPERTY.—The Assembly shall have power to regulate the time and manner of running cars, and the rates of fares on street railroads now or hereafter to be built, and the sale of tickets and exchange therefor between the several companies and to tax the property of street railroad companies in such manner as may be provided by law.

Sec. 3. SURRENDER OF FRANCHISES, HOW EFFECTED.—Any street railroad company unable or indisposed to carry forward its business may notify the Mayor of such indisposition, and surrender thereby all their chartered rights or franchises, in such manner

and under such terms and conditions as may be provided by ordinance.

Sec. 5. COMPANIES TO KEEP STREET BETWEEN RAILS IN REPAIR.—Street railroad companies shall keep the street between the rails, and to the extent of twelve inches outside of each rail in perfect repair, as nearly on a level with such rails as practicable and that portion outside the rails shall be of the same material as the street itself, and the Municipal Assembly shall provide by ordinance that bond or other security shall be given by the several companies, conditioned for a compliance with the provision of this section."

And in this connection we may refer to the Charter, Article III, Section 26, Clause 11, which confers general power on the city:

"Eleventh.—TO PROTECT RIGHTS OF CITY IN CORPORATIONS—GRANT, REGULATE AND REPEAL RAILWAY FRANCHISES—FREE PASSES ON STREET RAILWAYS PROHIBITED.—To take all needful steps in and out of the State, to protect the rights of the city, in any corporation in which the city may have acquired an interest; to have sole power and authority to grant to persons or corporations the right to construct railways in the city, *subject to the right to amend, alter or repeal any such grant in whole or in part,* and to regulate and control the same, as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles; but every right so granted shall cease, unless the work of construction shall be begun within one year from the granting of the right, and be continued to completion with all reasonable practical speed, and it shall be the cause of forfeiture of the rights and privileges derived from the city, of any railroad company operating its road only within this city, which shall allow any person to ride or travel on its road gratuitously or for less than usual price of

fare, unless such person be an officer or employe of such company."

The numerous special or right-of-way ordinances by which the respective independent street railway companies (which were subsequently consolidated or merged into the complainant) were originally authorized to operate in the City of St. Louis, are set out in full in the record (Print. Rec., pp. 78, *et seq.*).

These are the ordinances which the appellee claims to contain the clauses which are alleged to be an exercise of the City's charter power to license and tax street cars, and that hence that power was thereby exhausted as to appellee so that when subsequently ordinance 21,087, imposing a license-tax, was enacted, it is alleged to operate as an impairment of the contract-ordinances; or, differently stated, that the appellee claims to be exempted from the operation of ordinance 21,087, because of the terms of said special ordinances relating to complainant and the respective assignor companies.

It is therefore essential, for a proper understanding of this cause, to set out such provisions of these numerous ordinances as may bear on this contention.

The granting part of the said franchises or rights-of-way conferred thereby is in nearly all instances, substantially or literally, to the respective company in question "to operate, maintain and construct" or "to lay down, construct, operate and maintain" or "to reconstruct its tracks and maintain and operate its railway thereon," etc., over certain designated streets. These franchise privileges are conferred upon certain conditions and burdens imposed in these ordinances, the compliance with which complainant says exempts it from paying license-taxes, but which the ordinances say are assumed by complainant (or its respective assignors) as a

consideration for the franchise rights conferred. These burdens consist of payments of certain fixed sums payable each year, and also the repair of the streets within the tracks, limit of fare to be charged, and similar conditions herein below specifically set out.

An examination of these ordinances shows that such burdens (particularly payment of fixed amounts to the City per annum or percentage of receipts) are expressed to be assumed by the grantees *"in consideration of the rights, privileges and franchises hereby granted,"* or "rights and franchises granted in this ordinance" (or similar words), etc. Such is the language in the ordinances, set out in the bill and printed record.

The said burdens "in consideration" of which the franchises were conferred, are to the effect that "the said company shall pay to the City of St. Louis," certain sums, which are in this case generally a fixed amount per annum (in most instances increasing per year as the franchise ages), or in one or two instances a certain percentage of gross receipts; such (either one or the other) is the case in the following ordinances, to-wit:

Ord. 17,008, sec. 6, print. rec. p. 22 (Manch. Elec. Rd).
Ord. 17,375, sec. 6, print. rec. pp. 24, 25 (same).
Ord. 18,231, sec. 9, print. rec. p. 31 (same).
Ord. 19,392, sec. 10, p. 39 (Complainant's road).

The above particularly are the clauses calling for the payments claimed to be in lieu of, or as exempting from, the license tax in question, and are the provisions relied upon by complainants, and special attention is directed thereto.

In some of these ordinances above specified there appear

further conditions, for instance, that such payments are to be "in addition to all other taxes, or license fees hereafter prescribed by law, *or ordinance.*" So in:

Ord. 17,375, sec. 6, p. 25 (Manch. Elec).
Ord. 19,350, sec. 7, p. 35 (Complainant).

Other, though less important, of the burdens imposed, are that the companies keep the space between the rails and 12 or 18 inches on each side, paved and repaired. We believe every one of the ordinances (or nearly so) contains this provision.

And in others that the fare charged be not in excess of a certain sum, usually five cents. So in these ordinances:

Ord. 17,008, sec. 3, print. rec. p. 21 (Manch. Elec).
Ord. 17,375, sec. 2, print. rec. p. 24 (same).
Ord. 18,231, sec. 5, print. rec. p. 30 (same).
Ord. 19,392, sec. 5, print. rec. p. 37 (Complainant).

And the complainant and its assignors have expressly agreed "in accepting this ordinance to comply with the provisions of all general ordinances and charter provisions affecting street railroads that may now be in force or which may hereafter be enacted," etc. So in ordinances:

Ord. 19,392, sec. 13, print. rec. p. 39 (Complainant).
Ord. 17,008, sec. 7, print. rec. p. 22 (Manch. Elec.).
Ord. 17,375, sec. 7, print. rec. pp. 25-26 (same).
Ord. 18,231, sec. 9, print. rec. p. 31 (same).
Ord. 19,350, sec. 5, print. rec. p. 34 (Complainant).

The usual penalty for failure to observe any of these conditions and terms is that the same shall "cause the forfeiture of all the rights, privileges and franchises granted," etc.

There is some verbal evidence in the record, but the same is not only of a nature which is so incompetent and immaterial as to make it worthless, but on reading the same it will be found to relate exclusively to the St. Louis & Suburban Road, and is inapplicable to this case.

The Court below construed these special or right-of-way ordinances as being in themselves an exercise of the taxing power (given in clause 5, sec. 23, Art. III, of the City Charter), and that the conditions therein as above set forth were in fact a license tax, and being contracts, upon acceptance of the companies, could not be added to by another license tax, and hence held ordinance 21,087 to be void as against the complainants. (See Opinions, print. rec. 107.)

Being dissatisfied with the correctness of this decision, for the reasons as indicated in the assignment of errors next herein set out, the City of St. Louis appeals to this Court for a reversal of the decree and asks for the dismisal of the bill.

ASSIGNMENT OF ERRORS.

The formal assignment of errors filed and presented by the appellant City of St. Louis (omitting caption, etc.), is as follows (print. rec., pp. 104-105), to-wit:

Comes now the City of St. Louis, defendant in the above entitled cause, and says that the decree in said case is erroneous and against the just rights of said defendant, for the following reasons:

1st. The complainant's bill is not sufficient in law to entitle complainant to the relief granted in said decree, nor to any relief whatever.

2nd. The Court erred in enjoining the defendant from enforcing against the complainant Ordinance No. 21,087 of the City of St. Louis.

3rd. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis in any way operated to impair the obligations of any contract between complainant, or any of its assignors, and defendant.

4th. The Court erred in holding that Ordinance No. 21,087 of the City of St. Louis impaired the obligations of any of the special franchise ordinances of the City of St. Louis granting to the complainant the consent of the City of St. Louis to the construction, maintenance and operation of its road within the City of St. Louis.

5th. The Court erred in holding that the various special franchise ordinances under which complainant, or its assignors, obtained the consent of the City of St. Louis to con-

struct, operate and maintain street railways in said City, precluded the defendant, the City of St. Louis, from requiring complainant to pay a license tax on each car.

6th. The Court erred in holding that the City of St. Louis, by the special franchise ordinances granting complainant, or its assignors, the consent of the City of St. Louis to the construction, maintenance and operation of its street railway in said City, exempted the complainant from the imposition of a license tax provided for by Ordinance No. 21,087 of said City of St. Louis.

7th. The Court, after erroneously holding that the assignors of complainant were exempted from the payment of a license-tax by virtue of the special franchise ordinances granting it, or its assignors, the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, further erred in holding that such alleged exemption passed to the complainant as assignee.

8th. The Court erred in holding that the City of St. Louis had, in the divers and sundry special franchise ordinances by which complainant or its assignors obtained the consent of the City of St. Louis to construct, operate and maintain its street railway within said City, imposed a license tax or any tax at all; and the Court further erred in holding that the City of St. Louis could not lawfully amend, alter or change its taxing laws or ordinances.

9th. The Court erred in holding that the City of St. Louis did not have the right, under its charter, subject to which the complainants took their privileges, to repeal, alter or amend the special franchise ordinances under which complainant obtained the consent of the City to construct, operate and maintain its street railway within said City.

Wherefore defendant, The City of St. Louis, prays that the decree of the Circuit Court be reversed, and that said Court be directed to enter a decree in favor of said defendant.

SPECIFICATIONS OF ERROR.

As indicated in the above formal assignment of errors, appellants contend that the lower court erred in these respects:

(1) It misconstrued the special, or franchise, ordinances or rights-of-way (under which complainants and their predecessors in title, which form the constituent lines of complainants, derived their authority from the city) in construing the same as being in themselves an exercise of the city's right to impose a license tax on street cars under the Charter Article III, clause 5 of section 26, instead of merely terms and conditions for the grant, under the Charter Article X and the State Constitution Article XII, section 20.

(2) In holding the city had, in said special ordinances, contracted away, or attempted to contract away, its power to levy a license tax on street cars.

(3) In holding that if it had so attempted, that it could legally exempt complainants from license taxation in that manner.

(4) In holding that ordinance 21,087 was void because to recognize the city's right to enact it would enable the city to abuse such power, although there was no such abuse shown or decided to exist in the case before the court; in other words, in annulling the city's *power* to tax cars because it *might* abuse the same.

(5) After erroneously holding the conditions of said ordinances to be equivalent to providing for license taxes, in further erroneously holding that, regarded as license taxes, the city could not alter, amend or repeal the same.

(6) In holding that the city could not and did not exact the conditions and terms pleaded in the special or franchise ordinances without trenching upon or exhausting its taxing power.

(7) In holding that the city could contract away its taxing power at all.

(8) In holding that even if it could and did exempt the assignors of complainants, that such immunity passed to the latter.

POINTS AND AUTHORITIES.

I.

General Power to Enact a License Tax on Cars.

It must be conceded that under the Charter of the City of St. Louis (derived from the Constitution itself: Const. Missouri, Art. IX, Secs. 20-25), that City had the broad and specific power, in general, to enact ordinance 21,087 (set out Print. Rec., p. 99) imposing a license tax on all street railway cars operated within its limits, as well as to enact the prior ordinance thereby replaced, which had fixed the amount at $25.00 per car, per annum. The power to tax as well as to license is conferred in express terms.

Charter of St. Louis, Art. III, Sec. 26, clause 5, conferring power to license, tax and regulate street railway cars.

Springfield vs. Smith, 138 Missouri 645, 654, *et seq.*

Kansas City vs. Corrigan, 18 Missouri Appeals, 206.

27 Am. & Eng. Enc. Law (2d Ed.), "Street Railways," p. 52.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365.

See further on the general power of cities to impose license taxes in Missouri:

St. Louis vs. Weitzel, 130 Missouri 600, 619-620.

Aurora vs. McGannon, 138 Missouri 38, 45.

St. Louis vs. Green, 7 Missouri Appeals, 468, 474. 478, affirmed on this point in 70 Missouri 562.

See also, cases *infra* cited in Point II, Sub. (*c*).

Obviously the fact that a portion of the route of the company goes beyond the city limits can make no difference.

San Jose vs. S. J. Ry., 53 California, 475.
Newport News Ry. vs. Newport News, 100 Virginia, 157.
Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365.

In fact, if there were no authority in the State (acting here through its delegated agent, the City) for the imposition of this tax, the foundation of this Court's jurisdiction would be gone, and the bill would have to be dismissed on that ground.

Savannah, etc., Ry. vs. Savannah, 198 U. S., loc. cit. 396.

It follows that since such license tax ordinance as a general proposition is valid, the appellees are required to pay the same upon their cars, unless they can show affirmatively some valid legal reason why they are excepted from its application. This they seek to do by the claim (1) that the right-of-way or special ordinances conferring upon them and their assignors or predecessors in title the city's consent, of themselves impose such license-tax, which cannot hence be increased or altered by ordinance 21,087 without their consent; or (2) that said right-of-way ordinances should be construed as exempting appellees from all license taxes.

These are ultimately the only two points involved in this case.

II.

An examination of the numerous franchise or right-of-way ordinances to the predecessors of appellees demonstrates that the conditions therein recited "in consideration" of which the grants were made, are conditions annexed under Article X of the City Charter, and assumed by the street car companies in order to obtain the City's initial consent, necessary under the State Constitution, and cannot be construed as an exercise of the power conferred in the City Charter in Article III, Section 26, Clause 5, to tax street cars, nor as an exemption from such taxes.

(a)

There can be no question as to the right or propriety of the City to impose just such terms and conditions before giving its consent as it chose to impose in the said right-of-way ordinances, to-wit: payment of certain fixed stipulated sums or percentage of gross receipts, increasing as the franchise ages, paving and repair of space between the rails, rate of fare, time for completion of work, etc.; all of such provisions stand upon the same basis as to the City's power, but vary in particularity with each respective ordinance.

Whilst it is true in one sense that all Missouri corporations, including street railways, derive their franchises or right to exist originally from the State, acting through the General Assembly under general law, yet the rights-of-way conferred by the City upon street railroads are in effect equivalent to franchises, because unlike other corporations, under the Constitution, no street railroad can be granted the right "to construct and operate a street railroad within any city, town, village, or on any public highway without first

acquiring the consent of the local authorities, nor can the franchise so granted be transferred without similar assent."

> Constitution of Missouri of 1875, Art. XII, Sec. 20 (Print. Rec., p. 46). Note that in both the Constitution and Charter, an ordinance conferring the City's consent is termed a "franchise."
>
> See also as to such power being equivalent to a franchise:
>
> Blair vs. Chicago, 201 U. S. 400, loc. cit., 457-460;
> State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 190.

And the Charter of St. Louis also expressly provides that in granting the right-of-way or franchise to a street railway the City "as a consideration therefor, may impose a per capita tax on passengers transported *or an annual tax on gross receipts,*" etc.

> Charter of St. Louis, Art. X, Sec. 1.

Now these provisions of Art. X of the Charter are the very terms exercised in the contract ordinances or rights-of-way ordinances (set out Print. Rec., 78 to 95, a synopsis of which is given in our statement *ante*, pp. 19-21), which appellees rely on. And this Art. X of the Charter plainly refers to conditions to be annexed to the City's consent (as required by Art. XII, Sec. 20, of the Constitution, *supra*) to a street railway franchise, and these conditions when enacted in the franchise-ordinances and accepted by the companies are the price of such consent, *and are limited to that.*

But this Art. X of the Charter and such conditions annexed to obtaining a franchise thereunder and under the

Constitution, is wholly independent of the power to impose a *license tax on street cars* given under clause 5, of sec. 26, of Art. III of the Charter, *supra.*

This distinction goes to the core of the case.

If observed, it follows that the consent conditions to a franchise can not operate as a license-tax on cars.

(*b*)

Under the Constitutional and Charter provisions above cited, the power given to the City is not limited to a mere "yes" or "no" in granting the right-of-way or franchise ordinances, but it may impose such conditions upon its consent as it sees fit.

St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, loc. cit. 252-253.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 457-460.
Allegheny City vs. Street Railway, 159 Pa. St. 411.
27 Am. & Eng. Enc. L. (2nd Ed.) "Street Railways," pp. 21-22.

See also:
Ashley vs. Ryan, 153 U. S. 436, loc. cit. 441-445.

(*c*)

It is therefore obvious that these "considerations" are but the bonus or price paid to the City for its consent to place the street railway companies upon the same plane to do business that other corporations have without any such consent. So far the ordinances are contractual and once accepted are binding as contracts.

But this has nothing to do with the further power of the

City to impose a license-tax on street cars, as on any other conveyance using the streets, which power is not contractual, and exists by virtue of a totally different clause of the Charter. There may be a license, and a tax on the license.

One power is to contract, the other is to tax. The lower court ignored this distinction, or rather held that there was none such. While burdens agreed upon in such right-of-way ordinances are sometimes erroneously or inaccurately called a "tax," in the sense of being a burden, they are in law not included under provisions relating to either general taxes or license taxes.

Metropol. Street Ry. vs. N. Y., 199 U. S. loc. cit. 44-45, 46.

Brooklyn City Ry. vs. N. Y., 199 U. S. 48, loc. cit. 50.

Mayor, etc., vs. Broadway Ry., 97 N. Y. 275, 283-284.

Newport, etc., Railway vs. Newport, 100 Virginia 157, loc. cit. 162.

City of Newport vs. Street Ry., 89 Ky. 29.

It has therefore been uniformly held that such contractual obligations as are in question in this case, assumed by street railway companies in obtaining municipal right-of-way ordinances or franchises "to operate, construct and maintain" street railways, under provisions practically like those here in issue, are never construed as exempting or relieving the street car companies from the imposition of license taxes by duly enacted ordinance of such municipality, even if not imposed until after the acceptance of the companies' franchise ordinances.

There is not a word in any of the ordinances relied upon

by appellees that hints at a surrender by the City of its power to tax street-cars, or to exempt them from such tax, or grant an immunity therefrom.

In construing the ordinance of a City conferring upon a street railway company the authority to construct and operate a street railway, the right of the City to exact license ~~fees~~ will not be denied unless such right has been expressly surrendered in the ordinance. Such grants are construed strictly against the corporation companies, and liberally in favor of the public; silence is negation, and doubt is fatal to the claim. There is no such surrender by a grant to operate, construct and maintain a street railway, though given upon compliance with certain conditions and payments. And when the contract ordinance between the City and the company does not in terms dispense with the payment of a license tax, the rights of a company are not impaired by a subsequent ordinance requiring such payment.

Springfield vs. Smith, 138 Missouri, 645, 655.
Wyandotte vs. Corrigan, 35 Kansas, 21.
New Orleans City Ry. vs. New Orleans, 143 U. S. 192.
Railway Co. vs. Philadelphia, 101 U. S., 528.
Met. Street Ry. Co. vs. New York, 199 U. S. 1, loc. cit. 37.
Savannah Ry. vs. Savannah, 198 U. S., 392, 398.
Blair vs. Chicago, 201 U. S. 400, loc. cit. 471-473.
State ex rel. Cream City Ry. vs. Hilbert, 72 Wisconsin, 184, loc. cit. 194.
Newport, etc., Ry. vs. Newport, 100 Virginia, 157.
New Orleans vs. Orleans Ry. Co., 42 La. An. 4.
New Orleans vs. New Orleans Ry. Co., 40 La. An. 587.

San Jose vs. S. J. Railway, 53 Cal. 475, 481.
State vs. Herod, 29 Iowa, 123.

See also:

Rochester Ry. vs. Rochester, 205 U. S. 236, 248.
Cleveland Electric Ry. vs. Cleveland, 204 U. S. 116, 130.

If the companies wished or intended to have an exemption of any kind from taxation, or felt it was necessary for the profitable working of their business, they should have required a provision to that effect in their charters.

Memphis Gas Co. vs. Shelby, 109 U. S. 398, followed in New Orleans Ry. vs. New Orleans, 143 U. S. loc. cit., 195, Metropolitan Street Ry. vs. New York Tax Comrs., 199 U. S. loc. cit. 42, and other cases.
Newport, etc., Ry. vs. Newport, 100 Virginia loc. cit. 163.

See also cases, *supra*:

(*d*)

If there were doubt as to whether the special or franchise ordinances here in question should be construed to exempt or relieve the railway companies from payment of the general license tax, such doubt would be removed by the interpretations placed thereon by the companies themselves, which have always recognized the obligation to pay a license tax independently of the contract-ordinances, and which paid the general license-tax fee of $25.00 per car, and continued so to do until the amendment of that general ordi-

nance by ordinance 21,087 in 1903. Obviously if the latter was an attempted impairment of the obligations of the City under the contract ordinances, so was the $25.00 tax ordinance. The amendment did not change the nature of the payment required, but merely the amount and method (which latter are matters not before the Court at this time). If the claim now made, that the special payments under the contract-ordinances worked immunity from a license-tax were correct, it was just as much so when the license-tax was fixed at $25.00 per car, which, however, the companies all paid. If the present ordinance of 1903 is void, so was the amended one, yet the validity of the latter is admitted by the annual payments made for half a century thereunder by the predecessors or assignors of complainants, and indeed, by the latter themselves for years, since their organization.

It is a well-established rule (applicable in favor of a municipality as in any other case) that in case of ambiguity in the language, the contemporaneous interpretation placed upon a contract (though it be an ordinance-contract with a City) by the parties themselves, is entitled to great if not controlling influence, especially if continued over a long period of time.

St. Louis Gaslight Co. vs. St. Louis, 46 Missouri, 121, 127 *et seq.*
St. Louis vs. Laclede Gas Light Co., 155 Missouri, 1 l. c., 19.
Dist. of Col. vs. Gallagher, 124 U. S. 505.
Insurance Co. vs. Dutcher, 95 U. S. loc. cit. 273.
Topliff vs. Topliff, 122 U. S. 121, loc. cit. 131.

(*e*)

Nor is it to be overlooked as corroborative of the plain

construction contended for by the City, that while on the one hand there is not an intimation upon which appellee can put its fingers, in any one of the numerous franchise ordinances, which expressly or impliedly *surrenders* the right of the City to tax street cars, yet there are distinct assertions which slipped into some of these ordinances which show the thought that the right to impose license taxes is not involved in them, and which require the fixed payments (claimed by appellees to be of themselves, or to exempt them from license taxes) to be paid, in addition to license fees now or hereafter prescribed by law *or ordinance*. Such provisions are directly contradictory of the contention here urged by the railways as any reference to general ordinances requiring such payments must be to those imposing license-taxes; these provisions are hence significant of the light in which such payments assumed in the consent ordinances are regarded, to-wit, as in no way being of themselves license taxes, otherwise they would not be expressed as paid apart therefrom, or in addition thereto.

(See ordinances enumerated in our Statement, *ante*, pp. 20-21).

(*f*)

Again, the complainants have no standing here because *they have agreed to pay this very tax in issue in the contract-ordinances.*

The complainant and its predecessor have all in the consent-ordinances or franchise from the City expressly agreed to "comply with the provisions of all general ordinances and charter provisions affecting street railways that may now be in force or which may be hereafter enacted," etc.. (See the different ordinances so providing, which are enumerated and designated in appellants' Statement, *ante*, page

21, to-wit, Ord. 19,392, sec. 13, print. rec. p. 39; Ord. 17,008, sec. 7, print. rec., p. 22; Ord. 17,375, sec. 7, print. rec., 25-26; Ord. 18,231, sec. 9, print. rec., p. 31, and Ord. 19,350, sec. 5, p. 34.)

There *was* such a general license-tax ordinance then in force; and the present one is such a general ordinance, amending the former.

These provisions above quoted from the franchise ordinances of themselves amount to a contractual acceptance of the general ordinance in force when all of these contract-ordinances were enacted and accepted, imposing a license-tax of $25.00 per car, and also are an executory acceptance of the subsequent general one mill ordinance here in issue, amending said prior ordinance.

And this is true, even if in the absence of such agreement incorporating them by reference the said license-tax ordinances would be inapplicable to such companies because operating as an impairment of contract; and in fact even if they were wholly void (which of course is not the case, being here clearly within the City's general power).

Interstate Consolidated Street Ry. vs. Massachusetts, 207 U. S., 79.

III.

If the City had attempted to barter away its power to impose the license-tax in question, in the contract-ordinances conferring its consent, as claimed by appellees, such action would have been void as contrary to law, for either of several reasons.

As shown above in point II, we think that a construction of the right-of-way ordinances upon proper legal principles, will exclude the possibility of appellees being correct that they were intended to be relieved from payment of license-taxes on cars, and we think it will not be necessary to go further. But, for the sake of the argument only, we contend that if the railways were right in that contention, it would not avail them, for such attempted exemption would be void, whether (1) the City attempted expressly to exempt the railway companies, or (2) impliedly imposed a license-tax by providing for the percentage payments to be taken in lieu of such tax, which really amounts to the same thing.

(*a*) The City cannot bind its hands not to tax, or to exempt from taxes.

The sovereign State perhaps has the power to enact a binding contractual exemption from taxation, were it not prohibited by its constitution, which, however, it is in Missouri: Const. 1875, Art. X, secs. 2, 6 and 7. The City of St. Louis is specially authorized by the Constitution to provide in its charter for levying taxes for municipal purposes, in such manner as is not inconsistent with the constitution and laws. (Const. Art. IX, sec. 21; St. Louis vs. Bircher, 76 Mo. 431; St. Louis vs. Sternberg, 69 Mo., 289, 298.)

But taxation (without which power the municipality ceases to exist) is an attribute of sovereignty that the legislature of this State has not, in fact, cannot, authorize a municipality to contract away, any more than the police power. The legislature cannot delegate a power denied to itself by the Constitution. A contract by a city, attempting it, is to that extent simply ultra vires and void.

Springfield vs. Smith, 138 Missouri, 645 (applying that rule to a street car tax exemption).
State vs. Railroad, 75 Missouri, 208.
Savannah, Thunderbolt, etc., Ry. Co. vs. Savannah, 198 U. S., 392.
People ex rel. Street Ry. vs. Tax Com'r., 174 N. Y. 417, loc. cit. 448, affirmed in 199 U. S. 1.

That a license fee for revenue *is a tax* is settled in Missouri:

St. Louis vs. Spiegel, 75 Missouri, 145.
St. Louis vs. Spiegel, 90 Missouri, 587, loc. cit. 591.

See also:
Springfield vs. Smith, *supra.*

(*b*) If the argument were sound (which it is not) that the City had exercised and exhausted its license-taxing power in imposing the conditions of percentage payments on gross receipts, or certain fixed sums, which should be regarded as annual license-taxes on cars, such an attempt by the City would be void for the additional reason that there would be no uniformity in such a tax, but a different, special and invidiously discriminating license-tax for each and every of the many independent constituent lines of the United Railways Company as assignee, and through which it holds. The City would have no power arbitrarily to charge one company or individual one price by way of a license, and another in the same business another price. The tax must be uniform upon all within the same class. (Const. Missouri, Art. X, sec. 3; print. rec., p. 13.) Such a tax must be by general law, substantially uniform in its operation throughout the City, and not by specific, unequal, special,

single and dissociated provisions applicable to different individual cases. If so it would be void.

Kansas City vs. Corrigan, 18 Missouri Appeals, 206, 215.
St. Louis vs. Spiegel, 90 Missouri, 587.
St. Louis vs. Spiegel, 75 Missouri, 145.
Aurora vs. McGannon, 138 Missouri, 38, 48.
Railway Co. vs. Philadelphia, 101 U. S., l. c., 537.
See also below under point VI, subdivision (b).

We do not claim it is void, but only that such an absurd result would follow if complainants' contention were sound. No construction, involving such results, will be sustained.

But even if void, then, since these are the conditions under which the railways are authorized to do business at all, it follows they would have no authority to operate whatever, and hence have no standing in court. An essential condition being void, the whole ordinance would be void.

So held in St. Louis & Mer. Riv. Ry. vs. Kirkwood, 159 Missouri, 239, l. c. 253.
See also Allegheny City vs. Ry., 159 Pa. St. 411, loc. cit. 418-419.

IV.

The immunity from taxation burdens would not pass to complainants.

Moreover, such an exemption (if created) even when the main grant is of rights, privileges and franchises to the grantee and its successors and assigns will not pass with an assignment or transfer to the assignee or transferee.

Rochester Ry. vs. Rochester, 205 U. S. 236, collating the authorities.

Phoenix Ins. Co. vs. Tennessee, 161 U. S. 174, 180, *et seq.*

Keokuk Ry. vs. Missouri, 152 U. S. 301, 307, *et seq.*

Railroad vs. Georgia, 98 U. S. 359.

Turnpike Co. vs. Sanford, 164 U. S. 578, 586, *et seq.*

Railroad vs. Pendleton, 156 U. S. 667, 673.

V.

The right to alter, amend or repeal.

(*a*) Again, even if the argument were sound (which of course it is not) that the recited considerations for the right-of-way franchises were to be treated as if they were license taxes, or operated to exempt from the City's charter power to tax street cars, then treating such provisions as license-tax burdens, the rights conferred would still in that respect be subject to the further provision in the contract-ordinance enfranchising this complainant that "The City of St. Louis reserves the power to alter, amend, or repeal this ordinance at any time;" and also to the charter provision (in force at the times and since these franchise ordinances were enacted) that every such grant is taken "subject to the right to amend, alter or repeal any such grant in whole or in part."

Ord. 19,350, sec. 8, print. rec., p. 35.

Charter of St. Louis, Art. III, sec. 26, clause 11 (print. rec., p. 42). That this clause applies to street railways is obvious (and is so recognized in State ex inf. vs. Lindell Ry., 151 Mo. loc. cit. 181, where it is cited in discussing the street railway laws of St. Louis).

Conceding for the argument that the franchises of these companies amount to a contract of exemption, yet since at the time of the adoption thereof there existed the paramount power to repeal, alter or amend, the alleged exemption or relief from future license-taxes may be revoked without impairing the obligations of the contract, because the paramount reserve power, which is treated as if embodied in the contract, deprives the contract of its irrevocable character, at least with respect to such provisions as relief from license-taxation.

Railway Co. vs. Philadelphia, 101 U. S. 528, loc. cit. 540.

Fair Haven R. R. Co. vs. New Haven, 203 U. S. 379, loc. cit. 388-389.

San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 308.

Interstate Consol. Street Ry. vs. Massachusetts, 207 U. S. 79.

State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.

Citizens' Bank vs. Owensboro, 173 U. S. 639, loc. cit. 644.

Street Railway Co. vs. Sioux City, 138 U. S. 93, loc. cit. 108.

Railroad vs. Georgia, 98 U. S. loc. cit. 365.

(*b*) A further important consideration is that at all times when any of the right-of-way ordinances were enacted which provide for the payments claimed to operate as immunity from the street car license-tax, the general ordinance existed, formed part of the charter of the railroads, and was in fact complied with, fixing a tax of $25.00 per annum on each car; and the City certainly had the right to amend such general ordinance by changing the amount, under its

power to alter, amend or repeal any grant in whole or in part, even if it had not power to so do otherwise.

State ex rel. Ry. vs. Hilbert, 72 Wisconsin, 184, 193.
Fair Haven Ry. vs. New Haven, 203 U. S. 379, 388-389.
Stanislaus Co. vs. San Joachin Co., 192 U. S. 201, and cases there cited.

VI.

The Ordinance is Uniform.

(*a*) There is no merit in the contention that the ordinance denies complainants the equal protection of the law on the ground that it discriminates between street railroads and other public conveyances such as steam roads, automobiles, hacks, etc.

When a city having power to tax vehicles, trades, callings, etc., taxes alike all persons engaged in such business, such taxation is equal and uniform. Street railroads may be put in a class by themselves.

Metropolitan Street Railway vs. New York, 199 U. S. 1, 47.
Savannah Ry. vs. Savannah, 198 U. S. 392.
Aurora vs. McGannon, 138 Missouri, 38, 48.
St. Louis vs. Bowler, 94 Missouri, 630, 634.
Newport Ry. vs. Newport, 100 Virginia, 157, 161.
Armour Packing Co. vs. Lacy, 200 U. S. 226, 235.

(*b*) Neither is there anything objectionable in the form of this ordinance fixing the amount of the tax according to a graduated scale, instead of a fixed sum.

This phase is considered below under point VIII, where high authorities sustaining such form are cited.

(*c*) But while there is nothing in the argument that Ord. 21,087, wholly general in its provisions, is not uniform, the mere fact that such an argument is made accentuates and emphasizes how absurd it would be to regard each and every of the individual special or contract ordinances conferring the municipal franchises on complainants' assignors as license-tax provisions. See on this point *ante* under point III, sub-division (b).

VII.

The ordinance is not oppressive, unreasonable, or confiscatory. Neither can it be attacked in this case on that ground.

(*a*) The ordinance is certainly reasonable and fair on its face. There is no evidence worthy of consideration that it is oppressive, confiscatory or unreasonable.

The State, acting through its delegated agent, the City, has a right to impose a license-tax on street cars for the use of the streets, and burdening them with rails, etc., thereby requiring the street car companies (like others) to contribute to meet the burden of the City's government, in which they so largely share. A tax of one mill per day passenger is certainly not excessive in a metropolis of nearly three-quarters of a million people. If the car carries few passengers or remains largely unused, the tax is proportionally less; if jammed with passengers, then more—as it ought. As seen by the citations in point VIII, a tax graduated according to the earning power of the subject thereof, is to be recommended as an equitable adjustment.

(*b*) We fail to see any cogency in the main argument of the lower Court that if the City can impose a mill tax license, assumed to be two per cent of gross receipts (which, however, is erroneous because not allowing for receipts from other sources, such as running of ambulance and funeral cars, and U. S. mail cars, carrying expressage and freight, etc., as permitted to the lines: See, for instance, Ord. 19,350, sec. 6, p. 35, and Ord. 19,392, sec. 8, p. 38), that then "It can exact 50 per cent. or more, and of course can utterly destroy the value of complainant's property." The Court avowedly supposes a case not before it and argues the denial of all power because of possibility of abuse. The argument logically annuls the right of the City to impose any license tax on street cars, or for that matter on any other conveyance, business or subject of such a tax, as the possibility of abuse exists in any such case. It is sufficient answer that abuse is not present in this case.

This Court has long ago demonstrated the fallacy of that argument.

The possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.

Powell vs. Pennsylvania, 127 U. S. 678, loc. cit. 686.

Verdin vs. St. Louis, 131 Missouri 26, loc. cit. 130, per Sherwood, J., citing Powell vs. Pennsylvania, *supra.*

Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 295-296.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, loc. cit. 563.

The argument is in effect that to permit the State (through the City) to tax this company by a license-tax for the privilege granted by its charter, is to destroy that privilege. But the answer is that the company took the charter subject to the same right of taxation in the State that applies to all other privileges and all other property. If the companies wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business, they should have required a provision to that effect in their charters. The Constitution of the United States does not profess in all cases to protect from unjust and oppressive taxation

Met. St. Ry. vs. N. Y. Tax Com., 199 U. S. 1, loc. cit. 40.

New Orleans Ry. vs. New Orleans, 143 U. S. 192, 195.

Memphis Gas Co. vs. Shelby Co., 109 U. S. 398, 400.

Providence Bank vs. Billings, 4 Pet. (U. S.) 514, 563.

Newport News Ry. Co. vs. Newport News, 100 Virginia loc. cit. 163.

There is no presumption against the integrity of the Municipal Assembly; but on the contrary, the presumption favorable to that body is constantly indulged that it is actuated by fair considerations and is free from motives of oppression or wrong.

St. Louis vs. Fischer, 167 Missouri, 654, loc. cit. 663.

St. Louis vs. Howard, 119 Missouri, 47, loc. cit. 50.
Mich. Cent. Ry. vs. Powers, 201 U. S. 245, loc. cit. 295.

(*c*) Neither should this Court, in this proceeding, even consider the question whether the tax be excessive if it has been bona fide enacted, and is not a mere disguise to destroy the privileges conferred in the franchises. Given the power to levy the tax or fix the amount of the license, the argument that it operates oppressively is a consideration which is properly addressed to the municipal assembly and not the Courts.

St. Louis vs. Weitzel, 130 Missouri, 600, loc. cit. 620.
St. Louis vs. Green, 7 Missouri Appeals, 468, 478-479 (affirmed on this point in 70 Mo. 568).
Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, loc. cit. 376-377.
Kehrer vs. Stewart, 197 U. S. 60, loc. cit. 69-70.
St. Paul vs. Colter, 12 Minn. 41, 49.
Kansas City vs. Trieb, 76 Missouri Appeals, 478.
Home Ins. Co. vs. N. Y., 134 U. S. 594.
21 Am. & Eng. Enc. L. (2nd Ed.), p. 790.

At all events there is no evidence that the tax is confiscatory or unreasonable.

San Antonio Traction Co. vs. Altgelt, 200 U. S. 304, loc. cit. 309-310.

VIII.

The form of the car tax is unobjectionable.

Ordinance 21,087 amended the former ordinance so as to substitute for a fixed annual tax of $25.00 per car, a sum

equal to one mill per pay passenger carried. But the tax is still a license-tax *on each car;* it is not a demand for a portion of the fare collected; it is not a tax on the receipts. These may vary, be diminished or increased—the tax never. It is graduated by a fixed method according to the number of persons carried. In the new ordinance the amount is determined by a method uniform and equal in its application to each case. The graduated method is fairer, more equitable, less objectionable. At all events the method is purely one of legislative discretion.

The State and Federal Courts have often sustained this method of graduated tax and recommended it.

Clark vs. Titusville, 184 U. S. 329, loc. cit. 333-334.
Society for Savings vs. Coite, 6 Wall. (U. S.) 594, loc. cit. 608.
Maine vs. Grand Trunk Ry., 142 U. S. 217, l. c. 228-229.
Home Ins. Co. vs. N. Y., 134 U. S. 594, loc. cit. 600.
Aurora vs. McGannon, 138 Missouri, 38.
Amer. Express Co. vs. St. Joseph, 66 Missouri, 675, loc. cit. 680-681.
See also Mich. Cent. vs. Powers, 201 U. S. 245, loc. cit. 301.

IX.

The dignity of the assailed ordinance as a legislative enactment.

It is also to be remembered that the construction of the lower Court, if sustained, and that asked by appellees, would work a practical annullment of the ordinance, as if it were void.

The Courts will not hold a legislative enactment void except in case of compelling necessity.

The State Constitution provides for the organization of the City of St. Louis by Charter; the Charter provisions are direct delegations of State power to the municipality, and the ordinances enacted by the Municipal Assembly in pursuance thereof, so long as they are in the legitimate sphere of municipal affairs, are entitled to the same force and effect and the same intendments and presumptions of validity as are accorded to enactments of the General Assembly. This is especially true of street railway legislation in St. Louis.

State ex rel. vs. Lindell Ry., 151 Missouri, 162, loc. cit. 182-183.

Grand Ave. Ry. vs. Lindell Ry., 148 Missouri, 637, loc. cit. 645.

See also:

St. Louis vs. West. Union Tel. Co., 149 U. S. loc. cit. 467-470.

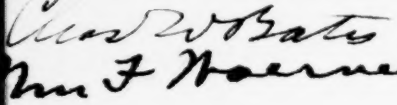
St. Louis vs. Boffinger, 19 Missouri 13, loc. cit. 15.

ARGUMENT.

This case is covered fully by the argument appended to our briefs in cases 193 and 194 (United Railways and St. Louis & Suburban Railway cases, immediately preceding this case on the docket).

We will therefore refer to said argument and omit a repetition thereof in this case.

It is respectfully submitted that there should be a reversal and dismissal of the bill of complaint.



CHARLES W. BATES,
WILLIAM F. WOERNER,
For Appellant City of St. Louis.

CITY OF ST. LOUIS *v.* UNITED RAILWAYS COMPANY.

SAME *v.* ST. LOUIS AND SUBURBAN RAILWAY COMPANY.

SAME *v.* ST. LOUIS AND MERAMEC RIVER RAILROAD COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

Nos. 193, 194, 195. Argued March 20, 23, 1908.—Decided May 18, 1908.

While a State, or a municipal corporation acting under the authority of the State, may deprive itself by contract of its lawful power to impose certain taxes or license fees, such deprivation only follows the use of clear and unambiguous terms; any doubt in the interpretation of the alleged contract is fatal to the exemption.

The fact that a street railway company has agreed to pay for the use of the streets of a city for a given period does not, in the absence of unequivocal terms to that effect, create an inviolable contract within the meaning and protection of the contract clause of the Federal Constitution which will prevent the exaction of a license tax within the acknowledged power of the city. *New Orleans City and Lake Railway Company* v. *New Orleans*, 143 U. S. 192.

The ordinances of the city of St. Louis, granting rights of construction and operation to street railways involved in this case, do not contain any clearly expressed obligation on the part of the city to surrender its right to impose further license or taxes upon street railway cars which is within the meaning and protection of the contract clause of the Federal Constitution.

THE facts are stated in the opinion.

Mr. William F. Woerner, with whom *Mr. Charles W. Bates* was on the brief, for appellant:

Under its charter, derived from the constitution of Missouri, art. IX, §§ 20–25, the city of St. Louis had the broad and specific power, in general, to enact ordinance 21,087 imposing a license tax on all street railway cars operated within its limits, as well as to enact the prior ordinance thereby replaced which had fixed the amount at $25.00 per car, per annum. The power

to tax as well as to license is conferred in express terms. Charter of St. Louis, art. III, § 26, cl. 5; *Springfield* v. *Smith*, 138 Missouri, 645, 654; *Kansas City* v. *Corrigan*, 18 Mo. App. 206; 27 Am. & Eng. Enc. Law (2d ed.), "Street Railways," p. 52; *Wiggins Ferry Co.* v. *East St. Louis*, 107 U. S. 365. See further on the general power of cities to impose license taxes in Missouri: *St. Louis* v. *Weitzel*, 130 Missouri, 600, 619; *Aurora* v. *McGannon*, 138 Missouri, 38, 45; *St. Louis* v. *Green*, 7 Mo. App. 468, 474, aff'd on this point in 70 Missouri, 562.

An examination of the numerous franchise or right-of-way ordinances to the predecessors of appellees, demonstrates that the conditions therein recited "in consideration" of which the grants were made, are conditions annexed under art. X of the city charter, and assumed by the street car companies in order to obtain the city's initial consent, necessary under the state constitution, and cannot be construed as an exercise of the power conferred in the city charter in art. III, § 26, cl. 5, to tax street cars, nor as an exemption from such taxes.

There can be no question as to the right or propriety of the city to impose just such terms and conditions before giving its consent as it chose to impose in the said right-of-way ordinances, to wit: payment of certain fixed stipulated sums, or percentage of gross receipts increasing as the franchise ages, paving and repair of space between the rails, rate of fare, time for completion of work, etc.; all of such provisions stand upon the same basis as to the city's power, but vary in particularity with each respective ordinance.

Whilst it is true in one sense that all Missouri corporations, including street railways, derive their franchises or right to exist originally from the State, acting through the General Assembly under general law, yet the rights-of-way conferred by the city upon street railroads are in effect equivalent to franchises, because unlike other corporations, under the Constitution, no street railroad can be granted the right "to construct and operate a street railroad within any city, town, village, or on any public highway without first acquiring the

consent of the local authorities, nor can the franchise so granted be transferred without similar assent." Constitution of Missouri of 1875, art. XII, § 20. See also as to such power being equivalent to a franchise: *Blair* v. *Chicago*, 201 U. S. 400, *loc. cit.* 457–460; *State ex rel. Cream City Ry.* v. *Hilbert*, 72 Wisconsin, 184, *loc. cit.* 190.

And the charter of St. Louis also expressly provides that in granting the right-of-way or franchise to a street railway, the city "as a consideration therefor, may impose a per capita tax on passengers transported or an annual tax on gross receipts." Charter, art. X, § 1.

In construing the ordinance of a city conferring upon a street railway company the authority to construct and operate a street railway, the right of the city to exact license taxes will not be denied unless such right has been expressly surrendered in the ordinance. Such grants are construed strictly against the corporation companies, and liberally in favor of the public; silence is negation, and doubt is fatal to the claim. There is no such surrender by a grant to operate, construct and maintain a street railway, though given upon compliance with certain conditions and payments. And when the contract ordinance between the city and the company does not in terms dispense with the payment of a license tax, the rights of a company are not impaired by a subsequent ordinance requiring such payment. *Springfield* v. *Smith*, 138 Missouri, 645, 655; *Wyandotte* v. *Corrigan*, 35 Kansas, 21; *New Orleans City Ry.* v. *New Orleans*, 143 U. S. 192; *Railway Co.* v. *Philadelphia*, 101 U. S. 528; *Met. Street Ry. Co.* v. *New York*, 199 U. S. 1, 37; *Savannah Ry.* v. *Savannah*, 198 U. S. 392, 398; *Blair* v. *Chicago*, 201 U. S. 400, 471; *State ex rel. Cream City Ry.* v. *Hilbert*, 72 Wisconsin, 184, 194; *Newport &c. Ry.* v. *Newport*, 100 Virginia, 157; *New Orleans* v. *Orleans Ry. Co.*, 42 La. Ann. 4; *New Orleans* v. *New Orleans Ry. Co.*, 40 La. Ann. 587; *San Jose* v. *S. J. Railway*, 53 California, 475, 481; *State* v. *Herod*, 29 Iowa, 123; *Rochester Ry.* v. *Rochester*, 205 U. S. 236, 248; *Cleveland Electric Ry.* v. *Cleveland*, 204 U. S. 116, 130.

Mr. Henry S. Priest, for appellees:

The city of St. Louis had the power to grant the right to construct railways in the streets of the city; and the right to operate cars thereon for a definite period and a specific sum, payable as might be agreed. It might do both in a single ordinance, and such an ordinance when accepted by the grantee would become a binding and unalterable contract. This we claim it did by the several ordinances pleaded and put in evidence. *Detroit* v. *Railway Co.*, 184 U. S. 368; *Stearns* v. *Minnesota*, 179 U. S. 223; Art. III, § 26, subd. 5, 11, City Charter; Art. IV, City Charter.

The charter reservation of the right to alter, amend or repeal is not properly under discussion, because the ordinance which impairs the right does not pretend to be an amendment, alteration or repeal of the special ordinances granting the several rights to the different companies; and if it did, the right does not exist in such cases. Cases *supra* and Art. III, § 28, City Charter; *Ruschenberg* v. *Railway Co.*, 161 Missouri, 70.

MR. JUSTICE DAY delivered the opinion of the court.

These cases were submitted together and involve the effect of certain ordinances of the city of St. Louis, which are alleged to be binding contracts protected by the Federal Constitution.

A bill was filed in the Circuit Court of the United States for the Eastern District of Missouri by the United Railways Company of St. Louis and the St. Louis Transit Company, the former being the lessor and the latter the lessee of a large system of street railways in the city of St. Louis. The bill seeks to enjoin the enforcement of a certain ordinance, No. 21,087, in the city of St. Louis, passed March 25, 1903, alleging violation of the contract clause of the Constitution and of rights secured by the Fourteenth Amendment. The case was tried upon the bill, answer, replication and an agreed statement of facts.

The complainants are the owners of certain rights granted by ordinances to a number of street railway companies in the city of St. Louis, the assignors of the complainants. These ordinances are set out in the record and are quite numerous. Some of them cover quite extended terms, running as long as forty and fifty years. They purport on their face to grant to the railway companies named in the ordinances, their licensees, successors and assigns, rights in certain streets "to operate, maintain and construct,"—"to lay down, construct, operate and maintain,"—"to reconstruct its tracks and maintain and operate its railway thereon." The grants in these ordinances are in consideration of certain undertakings and obligations stated therein on behalf of the railway companies, which are thus epitomized in the opinion of the learned judge in the case in the Circuit Court: (1) To commence and complete the work of laying down the tracks and installing the road within certain specified periods. (2) To grade the streets from curb to curb. (3) To construct and keep in repair that portion of the street lying between the tracks and twelve inches outside thereof. (4) To cause cars to be run day and night at certain intervals named in the ordinances. (5) To pay certain stipulated sums of money, or certain percentages of the gross earnings of the several companies, to the city each year during the continuance of the privileges specified in the contract.

At the time these ordinances were passed there was in force in the State of Missouri a certain provision of the state constitution, namely:

"No law shall be passed by the general assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained."

The city charter of St. Louis contains, among others, the following provisions:

"ARTICLE X.

"SEC. 1. Authority of municipal assembly in reference to street railroads--May sell franchises or impose a *per capita* tax or a tax on gross receipts.—The municipal assembly shall have power by ordinance to determine all questions arising with reference to street railroads, in the corporate limits of the city, whether such questions may involve the constructions of such street railroads, granting the right of way, or regulating and controlling them after their completion; and also shall have power to sell the franchise or right of way for such street railroads to the highest bidder, or, as a consideration therefor, to impose a *per capita* tax on the passengers transported, or an annual tax on the gross receipts of such railroad, or on each car, and no street railroad shall hereafter be incorporated or built in the city of St. Louis except according to the above and other conditions of this charter, and in such manner and to such extent as may be provided by ordinance."

There was also in force in the city charter of St. Louis, article III, § 26, subdivision 11, which empowers the city, through its mayor and municipal assembly:

"Eleventh.—To protect rights of city in corporations—Grant, regulate and repeal railway franchises—Free passes on street railways prohibited.—To take all needful steps in and out of the State, to protect the rights of the city in any corporation in which the city may have acquired an interest; to have sole power and authority to grant to persons or corporations the right to construct railways in the city, subject to the right to amend, alter or repeal any such grant, in whole or in part, and to regulate and control the same as to their fares, hours and frequency of trips, and the repair of their tracks, and the kind of their rails and vehicles; but every right so granted shall cease, unless the work of construction shall be begun within one year from the granting of the right and be continued to completion with all reasonable practical speed, and it shall be the cause of forfeiture of the rights and privileges derived from the city of any railroad company operating

its road only within this city, which shall allow any person to ride or travel on its road gratuitously or for less than usual price of fare, unless such person be an officer or employee of such company."

The fifth subdivision of § 26 of article III, clause 5, confers upon the mayor and assembly the power to license, tax and regulate certain occupations and kinds of business, vehicles, conveyances, etc., among others, street railway cars. As appears from the agreed statement of facts, at the time the ordinances granting rights to the street railways were passed there were sections of the municipal code of St. Louis (2134 *et seq.*) in force, requiring the street railway companies to pay to the city collector an annual license fee of $25 for each and every car used by them, in transporting passengers for hire in the city. These sections were passed under the power conferred to license, tax and regulate occupations, vehicles and street railway cars.

The ordinance which is the subject-matter of this controversy is No. 21,087, purporting to impose a tax equal to one mill for each pay passenger on each car, and purporting to be an amendment of the sections of the municipal code fixing the license tax at $25 per car. It is stipulated in the agreed statement of facts that all the railway companies named in the complaint, including the United Railways Company and the St. Louis Transit Company, paid the annual license of $25 per car until the going into effect of ordinance 21,087.

This case was decided by the learned judge of the Circuit Court upon the theory that the power of the city to give its consent to the use of the streets for the purpose of constructing and operating railroads, and the power to license street railway cars, were both exercised in the special ordinances in question, and that in fixing the compensation to be paid by the railway companies an irrevocable contract was made which prevented the city, during the terms of the ordinances, from imposing any license fee or tax for the operation of the cars; for, says the learned judge:

"There is neither statutory command nor any perceptible reason why both these powers should not be exercised in one and the same ordinance, and such, in my opinion, is the obvious purpose of the original ordinances granted to complainants' assignors.

"The right 'to construct and operate' is conferred in terms admitting of no doubt. The license, which is essentially an occupation tax, is, in my opinion, also fixed in each of the ordinances. The several original ordinances or contracts clearly mean that the city exacted, among other things, certain quarterly or yearly payments of money to be made to it by the railroad companies as a consideration for the grant by it of the right to occupy and use its streets for the purpose of laying down, maintaining and operating railroad tracks thereon. The law nowhere commands that the license fee, as authorized by the fifth subdivision in question, shall be for annual or other terminal occupation. And I perceive no reason why the city may not at the outset fix such a license for the full term of its grant. This is what I think it did in and by the terms and stipulations of the several ordinances in question."

The theory, then, upon which the bill was framed and this case decided was that the city, having once fixed a price for the use of its streets, which the railway companies had agreed to pay, there was no right to impose a license tax upon the railway companies under the ordinance of March 5, 1903, amending the municipal code in the manner already referred to. These sections of the municipal code requiring the payment of the license fee impose a tax, as the main purpose of their enactment is the raising of revenue. *City of St. Louis* v. *Spiegel*, 75 Missouri, 145, 146.

The principles involved in this case have been the subject of frequent consideration in this court, and while it can be no longer doubted that a State or municipal corporation, acting under its authority, may deprive itself by contract of the power to exercise a right conferred by law to collect taxes or

license fees, at the same time the principle has been established that such deprivation can only follow when the State or city has concluded itself by the use of clear and unequivocal terms. The existence of doubt in the interpretation of the alleged contract is fatal to the claim of exemption. The section of the Missouri constitution and the laws, to which we have referred, clearly show that while the franchise of the corporation essential to its existence is derived from the State, the city retains the control of its streets, and the use of them must be acquired from the municipal authorities upon terms and conditions which they shall fix. *Blair* v. *Chicago*, 201 U. S. 400.

An examination of the cases in this court shows that it is not sufficient that a street railway company has agreed to pay for the privilege of using the streets for a given term, either in a lump sum, or by payments in installments, or percentages of the receipts, to thereby conclude the municipality from exercising a statutory authority to impose license fees or taxes. This right still exists unless there is a distinct agreement, clearly expressed, that the sums to be paid are in lieu of all such exactions.

A leading case is *New Orleans City & Lake Railroad Co.* v. *New Orleans*, 143 U. S. 192. In that case the city of New Orleans, on October 2, 1879, sold to the New Orleans City Railroad Company, assignor of the plaintiff in error, for the price of $630,000, the right of way and franchises for running certain lines of railroad for carrying passengers within the city, for the term of twenty-five years, and the company agreed to construct its railroad, to keep the streets in repair, to comply with the regulations as to the style and running of cars, rates of fare and motive power, and to annually pay into the city treasury, upon the assessed value of the road and fixtures, the annual tax levied upon the real estate, the value of the road and fixtures to be assessed by the usual mode of assessment; and the city bound itself not to grant, during the period for which the franchises were sold, a right of way to any other

railroad company upon the streets where their right of way was sold, unless by mutual agreement between the city and the purchaser or purchasers of the franchises.

Afterwards, in the year 1887, under authority of a legislative act, the city imposed a license tax upon the business of carrying on, operating and running a horse or steam road for the transportation of passengers within the limits of the city, payable annually, and based on the annual gross receipts; when the same exceeded $500,000, the amount to be $2,500. The railroad company admitted its receipts exceeded that sum, and claimed the protection of the Constitution of the United States for its franchise contract extending to January 1, 1906, as above set forth.

This would seem to be as strong a case for the exemption from the license tax as could be made, short of a specific agreement binding the city not to exercise its power in that direction.

This court affirmed the judgment of the Supreme Court of Louisiana denying the contention of the railroad company (40 La. Ann. 587), and Mr. Justice Gray, speaking for the court, said (143 U. S. 195):

"Exemption from taxation is never to be presumed. The legislature itself cannot be held to have intended to surrender the taxing power, unless its intention to do so has been declared in clear and unmistakable words. *Vicksburg &c. Railroad* v. *Dennis*, 116 U. S. 665, 668, and cases cited. Assuming, without deciding, that the city of New Orleans was authorized to exempt the New Orleans City Railroad Company from taxation under general laws of the State, the contract between them affords no evidence of an intention to do so. The franchise to build and run a street railway was as much subject to taxation as any other property.

"In *Gordon* v. *Appeal Tax Court*, 3 How. 133, upon which the plaintiff in error much relied, the only point decided was that an act of the legislature, continuing the charter of a bank, upon condition that the corporation should pay certain sums

annually for public purposes, and declaring that, upon its acceptance and complying with the provisions of the act, the faith of the State was pledged not to impose any further tax or burden upon the corporation during the continuance of the charter, exempted the stockholders from taxation on their stock; and so much of the opinion as might, taken by itself, seem to support this writ of error has been often explained or disapproved. *State Bank* v. *Knoop*, 16 How. 369, 386, 401, 402; *People* v. *Commissioners*, 4 Wall. 244, 259; *Jefferson Bank* v. *Skelly*, 1 Black, 436–446; *Farrington* v. *Tennessee*, 95 U. S. 679, 690, 694; *Stone* v. *Farmers' Loan & Trust Company*, 116 U. S. 307, 328.

"The case at bar cannot be distinguished from that of *Memphis Gaslight Co.* v. *Shelby County*, in which this court upheld a license tax upon a corporation which had acquired by its charter the privilege of erecting gasworks and making and selling gas for fifty years; and, speaking by Mr. Justice Miller, said: 'The argument of counsel is that if no express contract against taxation can be found here it must be implied, because to permit the State to tax this company by a license tax for the privilege granted by its charter is to destroy that privilege. But the answer is that the company took their charter subject to the same right of taxation in the State that applies to all other privileges and to all other property. If they wished or intended to have an exemption of any kind from taxation, or felt that it was necessary to the profitable working of their business, they should have required a provision to that effect in their charter. The Constitution of the United States does not profess in all cases to protect property from unjust and oppressive taxation by the States. That is left to the state constitution and state laws.' 109 U. S. 398, 400."

This case was but an affirmation of the doctrine announced in *Railroad Company* v. *Philadelphia*, 101 U. S. 528; *Delaware Road Tax Case*, 18 Wall. 206. The New Orleans case was quoted with approval, and the former cases in this court reviewed in the recent case of *Metropolitan Street Railway Company* v. *New*

York Tax Commissioners, 199 U. S. 1. In that case the decision of the New York Circuit Court of Appeals was affirmed, sustaining the right of the State of New York to tax franchises of street railway companies, notwithstanding the railway companies had already paid for the right to construct, maintain and operate and use street railroads in consideration of payment into the treasury of the city of New York of a percentage of their gross receipts. In that case Mr. Justice Brewer, who spoke for the court, said (pp. 37, 38):

"Applying these well-established rules to the several contracts, it will be perceived that there was no express relinquishment of the right of taxation. The plaintiff in error must rely upon some implication and not upon any direct stipulation. In each contract there was a grant of privileges, but the grant was specifically in respect to the construction, operation and maintenance of a street railroad. These were all that in terms was granted. As consideration for this grant the grantees were to pay something, and such payment is nowhere said to be in lieu of or as an equivalent or substitute for taxes. All that can be extracted from the language used was a grant of privileges and a payment therefor. Other words must be written into the contract before there can be found any relinquishment of the power of taxation."

Many state authorities have reached the same conclusion. We will refer to some of them. *Springfield* v. *Smith*, 138 Missouri, 645; *Wyandotte* v. *Corrigan*, 35 Kansas, 21; *State ex rel. Cream City Ry.* v. *Hilbert*, 72 Wisconsin, 184; *Newport &c. Ry.* v. *Newport*, 100 Virginia, 157; *New Orleans* v. *Orleans Ry. Co.*, 42 La. Ann. 4; *New Orleans* v. *New Orleans Ry. Co.*, 40 La. Ann. 587; *San Jose* v. *S. J. Railway*, 53 California, 475, 481; *State* v. *Herod*, 29 Iowa, 123.

Applying these principles to the ordinances in question, we do not find in them any express relinquishment of the power to levy the license tax which is the subject-matter of this controversy. In some of them is found the language that "such payments are to be in addition to all taxes, as now or after-

wards shall be prescribed by law." In one ordinance concerning consolidation of roads it is agreed, as to certain payments from gross receipts, that such "payments shall be in addition to all other taxes or license fees now or hereafter prescribed by law." In one of them is found the following language:

"Said Lindell Railway Company shall in lieu of all payments, now required of it under any and all previous ordinances, and such as are now, or may hereafter by ordinance passed be required of any railroad company whose tracks it is hereby authorized to acquire, etc., on the first day of (various months) pay to the city of St. Louis, etc. (various sums), which several sums said Lindell Railway Company, its successors and assigns, in consideration of the rights and privileges granted by this ordinance, hereby agrees to pay to the city of St. Louis, at the times, . . ." etc.

The stipulation as to the payments to be in lieu of all other payments under previous ordinances and such as are now or may by ordinance be hereafter passed, etc., in this ordinance may well be referred to the special ordinances passed under the right to grant the use of the streets "in consideration of the rights and privileges" therein granted, and are not designed to repeal *pro tanto* the section of the municipal code then in effect imposing a license fee on railway cars operated in the city.

No ordinance contains any express relinquishment of the right to exact a license fee or tax. It is true that the city in granting the right to use the streets by special ordinance and in exercising by general ordinance the right conferred in the charter to impose a license tax upon cars is dealing with rights and privileges somewhat similar, but, nevertheless, essentially separate and distinct. In the special ordinances the city is making an arrangement with the railway company to confer the right to use the streets in consideration of certain things the company is to do by way of operation and otherwise, including, it may be, payment of fixed sums or a proportion of receipts in consideration of the rights and privileges conferred.

The city does this by virtue of its power to grant rights and privileges and control their exercise in the streets of the city, power expressly conferred in the charter of the city.

In the fixing of a license tax upon all companies alike for the privilege of using cars in the city, it is exerting other charter powers. It makes provision uniformly applicable to all persons or companies using street cars. It is a revenue measure equally applicable to all coming within its terms. We do not perceive that the exercise of the power to grant privileges in the streets in making terms with companies seeking such rights, in the absence of plain and unequivocal terms to that effect, excludes the city's right to impose the license tax under the power conferred for that purpose.

How, then, stands the case? Is it true that because the city has required and the company has agreed to pay certain sums fixed in amount, or based on the receipts, for the use of the streets, that it has thereby deprived itself of the power to exercise the authority existing at the time the ordinances were passed to license street railway cars, and in the exercise of that power to charge a license fee or tax? At the time when the several special ordinances were passed the city of St. Louis had the right under its charter to grant the use of the streets for the use of the company, upon the terms which are named in such ordinances. It also had authority under another provision of its charter to require a license fee on certain vehicles, including street railway cars. There was in force a section of the municipal code assessing this license charge at $25.00 per annum for each car. (This is the code which has been amended by No. 21,087, in controversy.) It is stipulated that until the passage of the last-named ordinance the railway companies paid the license fees without objection. It is said in the opinion of the learned judge below that the tax, equal to one mill for each paid passenger, amounts to a tax of two per cent on the gross receipts, and is, therefore, an increase on what the company had theretofore agreed to pay. But the tax is not levied on the gross receipts as such, and any license tax, in

whatever sum imposed, would take something from the gross receipts of the company.

It seems to us that this case is virtually decided by the rule laid down in *Railway Company* v. *New Orleans*, 143 U. S. 192, *supra*, which holds that because a street railway company has agreed to pay for the use of the streets of the city for a given period, it does not thereby create an inviolable contract which will prevent the exaction of a license tax under an acknowledged power of the city, unless this right has been specifically surrendered in terms which admit of no other reasonable interpretation.

We are of the opinion that an application of settled principles, derived from the decisions of this court, shows that these ordinances do not contain any clearly expressed obligation on the part of the city surrendering its right to impose further license fees or taxes upon street railway cars, and we are of the opinion that the learned Circuit Court erred in reaching the contrary conclusion and in granting a decree perpetually enjoining the enforcement of the ordinance in controversy.

We have discussed this case on the record and briefs filed in No. 193. It was said by the learned counsel in the argument at bar that cases Nos. 194, 195 involved identical questions. For the reasons stated the decrees in the three cases are reversed.

Reversed.